

San Francisco Law Library

No. 76904

Presented by

EXTRACT FROM BY-LAWS

Section 9. No book shall, at any time, be taken from the Library Room to any other place than to some court room of a Court of Record, State or Federal, in the City of San Francisco, or to the Chambers of a Judge of such Court of Record, and then only upon the accountable receipt of some person entitled to the use of the Library. Every such book so taken from the Library, shall be returned on the same day, and in default of such return the party taking the same shall be suspended from all use and privileges of the Library until the return of the book or full compensation is made therefor to the satisfaction of the Trustees.

Sec. 11. No books shall have the leaves folded down, or be marked, dog-eared, or otherwise soiled, defaced or injured. Any party violating this provision, shall be liable to pay a sum not exceeding the value of the book, or to replace the volume by a new one, at the discretion of the Trustees or Executive Committee, and shall be liable to be suspended from all use of the Library till any order of the Trustees or Executive Committee in the premises shall be fully complied with to the satisfaction of such Trustees or Executive Committee.



Digitized by the Internet Archive
in 2010 with funding from
Public.Resource.Org and Law.Gov

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES.)

THE UNITED STATES OF AMERICA,

vs.

Appellant,

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, GENERAL PETROLEUM CORPORATION, PRODUCERS TRANSPORTATION COMPANY, BRITISH-AMERICAN OIL COMPANY, NORTH MIDWAY OIL COMPANY, SUSAN ELLIOTT, A. B. PERKEY, F. J. ELLIOTT, JOHN BARNESON and WILLIAM WALKER,

Appellees.

VOLUME I.

(Pages 1 to 416, Inclusive.)

Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

FILED

DEC 19 1919

D. MONCKTON, CLERK

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES.)

THE UNITED STATES OF AMERICA,

vs. Appellant,

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, GENERAL PETROLEUM CORPORATION, PRODUCERS TRANSPORTATION COMPANY, BRITISH-AMERICAN OIL COMPANY, NORTH MIDWAY OIL COMPANY, SUSAN ELLIOTT, A. B. PERKEY, F. J. ELLIOTT, JOHN BARNESON and WILLIAM WALKER,
Appellees.

VOLUME I.

(Pages 1 to 416, Inclusive.)

Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Amended Bill of Complaint.....	100
Answer of Bankline Oil Company.....	67
Answer of British-American Oil Company....	160
Answer of Dominion Oil Company.....	179
Answer of General Petroleum Company.....	22
Answer of General Pipe-Line Company of California	20
Answer of John Barneson and William Walker to Amended Bill of Complaint.....	130
Answer of Independent Oil Producers Agency..	47
Answer of North Midway Oil Company.....	146
Answer of Producers Transportation Company.	144
Assignment of Errors on Appeal.....	767
Bill of Complaint	6
Certificate of Clerk U. S. District Court to Transcript of Record.....	784
Citation on Appeal.....	2
Copy of Amended Bill of Complaint Showing Service upon Defendants.....	114
Decree	202
Disclaimer of General Petroleum Corporation..	96
Disclaimer of Felix Chappellet.....	97

	Index.	Page
EXHIBITS:		
Plaintiff's Exhibit No. 1—Withdrawal Order of September 27, 1909.....		218
Plaintiff's Exhibit No. 2—Map.....		220
Plaintiff's Exhibit No. 3—Notice of Location of Placer Claim.....		221
Plaintiff's Exhibit No. 4—Quitclaim Deed Dated March 4, 1908, from B. Adams et al. to Frank R. Strong et al.....		223
Plaintiff's Exhibit No. 5—Quitclaim Deed Dated May 4, 1909, from Frank R. Strong et al. to British-American Oil Company		260
Plaintiff's Exhibit No. 6—Lease Dated September 27, 1909, Between British-American Oil Company and George W. Dickinson		296
Plaintiff's Exhibit No. 7—Resolution of Board of Directors of North Midway Oil Company		302
Plaintiff's Exhibit No. 8—Certificate of Diminution of Capital Stock of British-American Oil Company.....		539
Defendant Independent Oil Producers Agency Exhibit "A"—Sale Contract Dated January 23, 1913, Between Dominion Oil Company and Independent Oil Producers Agency.....		55
Defendants' Exhibit "B"—Bill for Lumber Furnished by The King Lumber Company		570

Index.	Page
Defendants' Exhibit "C"—Bill for Team- ing, Dated September 30, 1909.....	579
Defendants' Exhibit "D"—Bill for Team- ing, Dated October 31, 1909.....	580
Defendants' Exhibit "E"—Proof of Labor Filed on Behalf of British-American Oil Company, January 6, 1910.....	620
Final Decree	202
Judgment	202
Minutes of Court—December 18, 1916—Order Denying Various Motions of Dominion Oil Company	66
Minutes of Court—March 29, 1917—Order Set- ting Cause for Hearing on Plaintiff's Appli- cation to Amend Bill.....	75
Minutes of Court—April 28, 1917—Order Allow- ing Plaintiff to File Amended Bill of Com- plaint	99
Minutes of Court—April 3, 1918—Order Setting Cause for Final Hearing, etc.....	138
Minutes of Court—April 8, 1918—Order Con- tinuing Cause for Final Hearing.....	140
Minutes of Court—April 10, 1918—Order Con- tinuing Cause for Final Hearing.....	141
Minutes of Court—April 15, 1918—Order Con- tinuing Cause for Final Hearing.....	142
Minutes of Court—April 17, 1918—Order Con- tinuing Cause for Final Hearing.....	143
Minutes of Court—April 22, 1918—Hearing....	176

	Index.	Page
Minutes of Court—April 23, 1918—Hearing— Continued		187
Minutes of Court—April 24, 1918—Hearing— Continued		189
Minutes of Court—April 25, 1918—Hearing— Continued		192
Minutes of Court—April 26, 1918—Order Sub- mitting Cause		194
Minutes of Court—December 9, 1918—Order Continuing Hearing of Motion for Rehear- ing		206
Minutes of Court—January 6, 1919—Order Con- tinuing Hearing of Motion for Rehearing..		207
Minutes of Court—January 13, 1919—Order Continuing Hearing of Motion for Rehear- ing		208
Minutes of Court—January 15, 1919—Order Continuing Hearing of Motion for Rehear- ing		209
Minutes of Court—January 20, 1919—Order Submitting Motion for Rehearing.....		210
Minutes of Court—January 21, 1919—Order Overruling Motion for Rehearing.....		211
Motion of Dominion Oil Company for Dismissal.		32
Motion of Dominion Oil Company for Order to Strike Out		28
Motion of John Barneson for Dismissal.....		95
Motion of Northern Midway Oil Company et al. for Further and Better Statement of Claim		38
Motion of North Midway Oil Company et al. for Dismissal		41

Index.	Page
Motion of North Midway Oil Company et al. to Strike Out	44
Motion to Transfer Cause from Equity Side of Court to Law Side.....	36
Motion for Leave to File Amended Bill of Complaint	78
Names and Addresses of Attorneys of Record..	1
Notice of Election by United States as to Printing of Record	776
Notice of Motion for Leave to File Amended Bill of Complaint	76
Opinion	196
Opinion on Motion for Rehearing.....	211
Order Allowing Appeal.....	773
Petition for Appeal by the United States of America	765
Petition for Rehearing	203
Praecipe for Transcript of Record on Appeal by United States of America.....	778
Statement of the Evidence to be Incorporated in the Record on Appeal.....	216
Stipulation and Order Enlarging Time to and Including September 25, A. D. 1919, for Filing Statement of Evidence.....	214
Stipulation in Re Statement of Evidence.....	762
Stipulation of Dominion Oil Company in Re Motion to Strike Out, etc., Filed May 16, 1917	128

	Index.	Page
TESTIMONY ON BEHALF OF PLAIN-		
TIFF:		
ANDREWS, L. W.		462
Cross-examination		465
BAILEY, E. W. (In Rebuttal).....		696
Cross-examination		697
Redirect Examination		700
Cross-examination		701
BARE, R. H. (In Rebuttal).....		721
Cross-examination		725
Redirect Examination		731
Recalled—Cross-examination		725
Redirect Examination		732
BEST, F. F.		353
Cross-examination		356
Redirect Examination		359
Recross-examination		359
BICKMORE, JAMES (In Rebuttal)....		754
Cross-examination		755
BURNS, A. I. (In Rebuttal)		751
Cross-examination		752
BUTLER, A. H., Jr.....		461
CASEY, A. W.		508
Cross-examination		514
CASEY, W. P.....		470
Cross-examination		473
DAVIS, R. L.....		360
Cross-examination		361
DICKINSON, GEORGE W.....		458
Cross-examination		460

	Index.	Page
TESTIMONY ON BEHALF OF PLAIN-		
TIFF—Continued:		
FOX, PAUL (In Rebuttal).....		756
Cross-examination		756
Redirect Examination		756
Recross-examination		757
GEBAUER, OLIVE C.		362
HALDEMAN, GEORGE C.		447
Cross-examination		455
HENRY, C. E.		337
Cross-examination		342
Redirect Examination		346
HOPPER, HELEN R.		466
HORN, GUSTAVUS A.....		441
Cross-examination		446
JONES, ROY R.		316
Recalled		378
Cross-examination		431
Redirect Examination		435
Recalled		516
Cross-examination		519
KINGSTON, T. S. (In Rebuttal).....		733
Cross-examination		736
Redirect Examination.....		742
Recross-examination		742
MACON, ADDISON C.		468
Cross-examination		469
Redirect Examination		469
Recross-examination		470
Redirect Examination		470

	Index.	Page
TESTIMONY ON BEHALF OF PLAIN-		
TIFF—Continued :		
McCLIMANS, J. J. (In Rebuttal)		743
Cross-examination		746
Redirect Examination		751
McDONALD, J. E.		480
Cross-examination		481
Redirect Examination		483
McGRATH, WARREN F.		476
Cross-examination		479
MUSSER, HENRY L.		436
Cross-examination		439
RANDOLPH, E. W. (In Rebuttal)		702
SCOTT, FRANK		760
Redirect Examination		761
SHAW, ALBERT G.		370
Cross-examination		375
Redirect Examination		377
SOWERS, F. B.		347
Cross-examination		349
STRONG, FRANK R.		486
Cross-examination		505
Redirect Examination		506
Recross-examination		507
Redirect Examination		507
STRAUD, BENJAMIN		708
Redirect Examination		717
Recross-examination		721
Redirect Examination		721
TABOR, A. O. (In Rebuttal)		753
Cross-examination		754

	Index.	Page
TESTIMONY ON BEHALF OF PLAINTIFF—Continued:		
VAN SLYKE, WILLIAM G.		318
Cross-examination		323
Redirect Examination		329
Recross-examination		335
Redirect Examination		337
WARNER, EDWIN HALL		757
Cross-examination		758
WILCOX, CHARLES E. (In Rebuttal)		704
Cross-examination		706
Redirect Examination		707
TESTIMONY ON BEHALF OF DEFENDANTS:		
BURNS, F. J.		615
Cross-examination		618
BUTLER, A. H., Jr.		577
Cross-examination		582
Redirect Examination		588
Recross-examination		588
Redirect Examination		589
Recross-examination		589
JONES, ROY		525
Cross-examination		527
Recalled		638
KAY, E. W.		687
Cross-examination		690
Redirect Examination		693
Recross-examination		694
KING, E. W.		567
Cross-examination		572

	Index.	Page
TESTIMONY ON BEHALF OF DEFEND-		
ANT—Continued:		
LEVET, BENJAMIN F.		639
Cross-examination		644
Redirect Examination		656
Recross-examination		658
Redirect Examination		660
Recross-examination		663
Recross-examination		665
Redirect Examination		666
MAXWELL, WILLIAM O.		601
Cross-examination		608
McDONNELL, JOSEPH P.		589
Cross-examination		592
Redirect Examination		600
WORTHINGTON, F. M.		666
Cross-examination		672
Redirect Examination		683
Recross-examination		685
Redirect Examination		685
Recross-examination		686

Names and Addresses of Attorneys of Record.

For Appellant:

HENRY F. MAY, Esq.,

FRANK HALL, Esq.,

CHAS. D. HAMEL, Esq.,

Special Assistants to the Attorney General,
San Francisco, California.

For Respondents:

A. C. WEILL, Esq., San Francisco, Cal.,

Attorney for General Pipe Line Co.

J. R. PRINGLE, Esq., San Francisco, Cal.,

Attorney for Dominion Oil Co.

Messrs. PILLSBURY, MADISON & SUTRO,
San Francisco, Cal., Attorneys for Stand-
ard Oil Company.

Messrs. ANDREWS, TOLAND & ANDREWS,
Los Angeles, California,
Attorneys for Producers Transportation
Co., British American Oil Co., and
North Midway Oil Co.

Messrs. LANE, WHITE & ELLIOTT, San
Francisco, California,
Attorneys for Independent Oil Producers
Agency.

*In the District Court of the United States for the
Southern District of California, Northern Divi-
sion, Ninth Circuit.*

IN EQUITY—No. A.-58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PE-
TROLEUM COMPANY, BANKLINE OIL
COMPANY, STANDARD OIL COMPANY,
GENERAL PIPE-LINE COMPANY OF
CALIFORNIA, INDEPENDENT OIL PRO-
DUCERS AGENCY, GENERAL PETRO-
LEUM CORPORATION, PRODUCERS
TRANSPORTATION COMPANY, BRIT-
ISH AMERICAN OIL COMPANY, NORTH
MIDWAY OIL COMPANY, SUSAN ELLI-
OTT, A. B. PERKEY, F. J. ELLIOTT, JOHN
BARNESON and WILLIAM WALKER,
Defendants.

Citation on Appeal.

The United States of America,—ss.

To Dominion Oil Company, General Petroleum Com-
pany, Bankline Oil Company, Standard Oil
Company, General Pipe-Line Company of Cali-
fornia, Independent Oil Producers Agency,
General Petroleum Corporation, Producers
Transportation Company, British-American Oil
Company, North Midway Oil Company, Susan
Elliott, A. B. Perkey, F. J. Elliott, John Barne-
son and William Walker, GREETING:

YOU ARE HEREBY CITED and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty (30) days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the United States District Court for the Northern Division of the Southern District of California, wherein the United States of America is appellant and Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, General Pipe-line Company of California, Independent Oil Producers Agency, General Petroleum Corporation, Producers Transportation Company, British-American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey, F. J. Elliott, John Barneson and William Walker are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable R. S. BEAN, United States District Judge for the District of Oregon, this 27th day of June, in the year of our Lord one thousand nine hundred and nineteen, and of the Independence of the United States of America one hundred and forty-third.

R. S. BEAN,
District Judge.

Service of the above Citation is hereby accepted this 30th day of June, A. D. 1919, for and on behalf

of the appellees, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, General Pipe-line Company of California, Independent Oil Producers Agency, General Petroleum Corporation, Producers Transportation Company, British American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey, F. J. Elliott, John Barneson and William Walker.

A. C. WEIL,

Solicitor for General Petroleum Company, Bankline Oil Company, General Pipe-Line Company of California, General Petroleum Corporation, John Barneson and William Walker.

J. R. PRINGLE,

Solicitor for Dominion Oil Company.

OSCAR SUTRO,

PILLSBURY, MADISON & SUTRO,

Solicitor for Standard Oil Company.

ANDREWS, TOLAND & ANDREWS,

Solicitor for Independent Oil Producers Agency, Producers Transportation Company, British American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey and F. J. Elliott.

[Endorsed]: No. A-58. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America vs. Dominion Oil Company et als. Citation on Appeal. Filed Sep. 16, 1919. Chas. N. Williams, Clerk. By Maury Curtis, Deputy Clerk.

*In the District Court of the United States for the
Southern District of California, Northern Divi-
sion, Ninth Circuit.*

IN EQUITY—No. A.-58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PE-
TROLEUM COMPANY, BANKLINE OIL
COMPANY, STANDARD OIL COMPANY,
GENERAL PIPE-LINE COMPANY OF
CALIFORNIA, INDEPENDENT OIL PRO-
DUCERS AGENCY, GENERAL PETRO-
LEUM CORPORATION, PRODUCERS
TRANSPORTATION COMPANY, BRIT-
ISH AMERICAN OIL COMPANY, NORTH
MIDWAY OIL COMPANY, SUSAN ELLI-
OTT, A. B. PERKEY, F. J. ELLIOTT, JOHN
BARNESON and WILLIAM WALKER,

Defendants. [2*]

*In the District Court of the United States for the
Southern District of California, Northern Divi-
sion, Ninth Circuit.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PE-
TROLEUM COMPANY, BANKLINE OIL

*Page-number appearing at foot of page of original certified Transcript
of Record.

COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, PRODUCERS TRANSPORTATION COMPANY, BRITISH AMERICAN OIL COMPANY, NORTH MIDWAY OIL COMPANY, SUSAN ELLIOTT, A. B. PERKEY, and F. J. ELLIOTT,
Defendants.

Bill of Complaint.

To the Judges of the District Court of the United States for the Southern District of California, Sitting Within and for the Northern Division of Said District:

The United States of America, by Thomas W. Gregory, its Attorney General, presents this, its bill in Equity, against Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, General Pipe-Line Company of California, Independent Oil Producers Agency, Producers Transportation Company, British American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey and F. J. Elliott (citizens and residents, respectively, as stated in the next succeeding paragraph of this [3] bill), and for cause of complaint alleges:

I.

Each of the defendants, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, General Pipe-Line Company of California, Independent Oil Producers

Agency, Producers Transportation Company, British American Oil Company, and North Midway Oil Company, now is and at all the times hereinafter mentioned as to it was a corporation organized under the laws of the State of California.

The defendants, Susan Elliott, A. B. Perkey and F. J. Elliott, now are and at all the times hereinafter mentioned as to them were residents and citizens of the State of California, as complainant is advised and believes and so alleges.

II.

For a long time prior to and on the 27th day of September, 1909, and at all times since said date, the plaintiff has been and now is the owner and entitled to the possession of the following described petroleum, or mineral oil, and gas lands, to wit:

The Northwest quarter of Section Fifteen (15), Township Thirty-one (31) South, Range Twenty-two (22) East, M. D. M.

and of the oil, petroleum, gas and all other minerals contained in said land.

III.

On the 27th day of September, 1909, the President of the United States, acting by and through the Secretary of the Interior and under the authority legally invested in him so to do, duly and regularly withdrew and reserved all of the land hereinbefore particularly described (together with other lands) from mineral exploration [4] and from all forms of location or settlement, selection, filing, entry, patent, occupation or disposal, under the mineral and nonmineral land laws of the United States, and

since said last-named date, none of said lands have been subject to exploration for mineral oil, petroleum or gas, occupation or the institution of any right under the public land laws of the United States.

IV.

Notwithstanding the premises and in violation of the proprietary and other rights of this plaintiff, and in violation of the laws of the United States and lawful orders and proclamations of the President of the United States, and particularly in violation of the said order of withdrawal of the 27th day of September, 1909, the defendants herein, to wit, Dominion Oil Company, General Petroleum Company and Bankline Oil Company, entered upon the said land hereinbefore particularly described long subsequent to the 27th day of September, 1909, for the purpose of exploring said land for petroleum and gas.

V.

Neither of said defendants, nor any person or corporation under or through whom they claim a right or interest in said land, had discovered petroleum oil, gas or other minerals on or in said land before said land was withdrawn, as hereinbefore stated, by said Withdrawal Order made on the 27th day of September, 1909, as hereinbefore set forth; and neither of said defendants had acquired any rights on or with respect to said lands, or any part thereof, on or prior to said date. [5]

VI.

Long after the said order of withdrawal of Sep-

tember 27th, 1909, to wit, some time in the latter part of the year 1910, as plaintiff is informed and believes, there was first produced minerals, to wit, petroleum and gas, on or from said land; and the defendants, Dominion Oil Company, General Petroleum Company and Bankline Oil Company, have produced and caused to be produced therefrom large quantities of petroleum and gas, but the exact amount so produced plaintiff is unable to state. Of the petroleum and gas so produced, large quantities thereof have been sold and delivered by the said defendant, Dominion Oil Company, to the Standard Oil Company, Independent Oil Producers Agency and Producers Transportation Company; and the said defendants, General Petroleum Company and Bankline Oil Company, have sold and disposed of oil and gas produced from said land to others to plaintiff unknown. Plaintiff does not know and is therefore unable to state the amount of petroleum and gas which defendants, Dominion Oil Company, General Petroleum Company and Bankline Oil Company, have extracted from said land and sold, nor the amount extracted and now remaining undisposed of; nor the price received for such oil and gas as has been sold, and has no means of ascertaining the facts in the premises except from said defendants, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, Independent Oil Producers Agency and Producers Transportation Company, and therefore a full discovery from said defendants is sought herein. [6]

VII.

Each of the defendants, to wit, Dominion Oil Company, General Petroleum Company and Bankline Oil Company, hereinbefore alleged to have entered upon said lands, are now extracting oil and gas from said lands, drilling oil and gas wells thereon and otherwise trespassing upon said lands and asserting claims thereto, and threaten to and will, unless restrained by an order of this Court, continue to extract oil and gas from said lands, and to drill oil and gas wells thereon, and operate the same and extract oil and gas from said lands, and otherwise trespass upon said lands, and commit waste thereon, all to the irreparable injury of complainant and in interference with the policies of the complainant with respect to the conservation, use and disposition of said lands, and particularly the petroleum, oil and gas contained therein.

VIII.

Each of the defendants claims some right, title or interest in said land or some part thereof, or in the oil, petroleum or gas extracted therefrom, or in or to the proceeds arising from the sale thereof, or through and by purchase thereof; and each of said claims is predicated upon or derived directly or mediately from said pretended notice or notices of mining locations, and by conveyances, contracts or liens directly or mediately from said such pretended locators. But none of such location notices and claims are valid against complainant, and no rights have accrued to the defendants, or either of them, thereunder, either directly or mediately; nor have

any minerals been discovered or produced on said land except as hereinbefore stated; but said claims so asserted cast a cloud [7] upon the title of the complainant and wrongfully interfere with its operation and disposition of said land, to the great and irreparable injury of complainant; and the complainant is without redress or adequate remedy save by this suit, and this suit is necessary to avoid a multiplicity of actions.

IX.

Neither of the defendants, nor any person or corporation from whom they have derived any alleged interest, was, at the date of said order of withdrawal of September 27th, 1909, nor was any other person at such date, a *bona fide* occupant or claimant of said land and in the diligent prosecution of work leading to the discovery of oil or gas.

X.

The Defendants, Dominion Oil Company, General Petroleum Company and Bankline Oil Company, claim said lands under an alleged location notice which purports to have been posted and filed in the names of L. W. Andrews, Geo. C. Haldeman, Frank R. Strong, Stephen R. Dorsey, Wallace C. Dickinson, Warren F. McGrath, Geo. W. Dickinson and O. C. Gebauer, and known as the "Zee No. 8" Placer Mining Claim, bearing date January 1st, 1908.

XI.

The said location notice was filed and posted by or for the sole benefit of the defendant, British American Oil Company, or for someone else other than the persons whose names were used in said

pretended location notice, and the names of the pretended locators above set out were used to enable the defendant, British American Oil Company, or some person other than said persons whose names were so used, to acquire more than twenty acres of mineral land in violation of the laws of the United States. The said [8] persons whose names were so used in said location notice were not *bona fide* locators, and each of them was without an interest in said location notice so filed, and their names were not used to enable each of them, or either of them, to secure only twenty acres of said land or patent therefor; but each of said persons was a mere dummy fraudulently and unlawfully used for the purposes alleged, all of which complainant is informed and believes, and so alleges.

XII.

Except as in this bill stated, the plaintiff has no other knowledge or information concerning the nature of any other claims asserted by the defendants herein, or any of them, and therefore leaves said defendants to set forth their respective claims of interest.

In that behalf, the plaintiff alleges that, because of the premises of this bill, none of the defendants has or ever had any right, title or interest in or to, or lien upon said land, or any part thereof, or any right, title or interest in or to the petroleum, mineral oil or gas deposited therein, or any right to extract the petroleum or mineral oil or gas from said land, or to convey and dispose of the petroleum and gas so extracted, or any part thereof. On the

contrary, the acts of those defendants who have entered upon said land and drilled oil wells and used and appropriated the petroleum and gas deposited therein, and assumed to sell and convey any interest in or to any part of said land, were all in violation of the laws of the United States and the aforesaid order withdrawing and reserving said land; and all of said acts were and are in violation of the rights of the plaintiff, and such acts interfere with the execution by complainant of its public policies with respect to said land. [9]

XIII.

The present value of said land hereinbefore described exceeds Three Hundred Thousand Dollars (\$300,000).

In consideration of the premises thus exhibited, and inasmuch as plaintiff is without full and adequate remedy in the premises save in a court of equity where matters of this nature are properly cognizable and relievable, PLAINTIFF PRAYS:

1. That said defendants, and each of them, may be required to make full, true and direct answer respectively to all and singular the matters and things hereinbefore stated and charged, and to fully disclose and state their claims to said land hereinbefore described, and to any and all parts thereof, as fully and particularly as if they had been particularly interrogated thereunto, but not under oath, answer under oath being hereby expressly waived.

2. That the said land may be declared by this Court to have been at all times from and after the 27th day of September, 1909, lawfully withdrawn

from mineral exploration and from all forms of location, settlement, selection, filing, entry or disposal under the mineral or nonmineral public land laws of the United States; and that the said location notice was fraudulently filed and the said defendants did not acquire any right thereunder.

3. That said defendants, and each of them, may be adjudged and decreed to have no estate, right, title, interest or claim in or to said land, or any part thereof, or in or to any mineral or minerals or mineral deposits contained in or under said land, or any part thereof; and that all and singular of said land, together with all of the minerals and mineral deposits, including mineral oil, petroleum and gas therein or thereunder contained, [10] may be adjudged and decreed to be the perfect property of this plaintiff, free and clear of the claims of said defendants and each and every one of them.

4. That each and all of the defendants herein, their officers, agents, servants and attorneys, during the progress of this suit, and thereafter, finally and perpetually may be enjoined from asserting or claiming any right, title, interest, claim or lien in or to the said land, or any part thereof, or in or to any of the minerals or mineral deposits therein or thereunder contained; and that each and all of the defendants herein, their officers, agents, servants and attorneys, during the progress of this suit, and thereafter, finally and perpetually may be enjoined from going upon any part or portion of said land, and from in any manner using any of said land and premises, and from in any manner extracting, re-

moving or using any of the minerals deposited in or under said land and premises, or any part or portion thereof, or any of the natural products thereof, and from in any manner committing any trespass or waste upon any of said land or with reference to any of the minerals deposited therein or thereunder, or any of the other natural products thereof.

5. That an accounting may be had by said defendants, and each and every one of them, wherein said defendants, and each of them, shall make a full, complete, itemized and correct disclosure of the quantity of minerals (and particularly petroleum) removed or extracted or received by them, or either of them, from said land, or any part thereof; and of any and all moneys or other property or thing of value received from the sale or disposition of any and all minerals extracted from said land, [11]: or any part thereof, and of all rents and profits received under any sale, lease, transfer, conveyance, contract or agreement concerning said land, or any part thereof; and that the plaintiff may recover from said defendants, respectively, all damages sustained by the plaintiff in these premises;

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, derricks, drills, pumps, storage vats, pipes, pipelines, shops, machinery, tools and appliances of every character whatsoever thereon, belonging to or in the possession of said defendants, or any of them, which have been used or now are being used in the extraction, storage, transportation, refining, sale, manufacture or in any other manner in the produc-

tion of petroleum or petroleum products or other minerals from said land, or any part thereof, for the purpose of continuing, and with full power and authority to continue, the operations on said land in the production and sale of petroleum and other minerals when such course is necessary to protect the property of the complainant against injury and waste, and for the preservation, protection and use of the oil and gas in said land, and the wells, derricks, pumps, tanks, storage-vats, pipes, pipe-lines, houses, shops, tools, machinery and appliances being used by the defendants, their officers, agents or assigns, in the production, transportation, manufacture or sale of petroleum or other minerals from said land, or any part thereof, and that such receiver may have the usual and general powers vested in receivers of courts of chancery.

7. That the plaintiff may have such other and further relief as in equity may seem just and proper.
[12]

To the end, therefore, that this plaintiff may obtain the relief to which it is justly entitled in the premises, MAY IT PLEASE YOUR HONORS to grant unto the plaintiff a writ or writs of subpoena, issued by and under the seal of this Honorable Court, directed to said defendants herein, to wit: Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, General Pipe-Line Company of California, Independent Oil Producers Agency, Producers Transportation Company, British American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey and

F. J. Elliott, therein and thereby commanding them, and each of them, at a certain time and under a certain penalty therein to be named, to be and appear before this Honorable Court and then and there, severally, full, true and direct answers make to all and singular the premises, but not under oath, answer under oath being hereby expressly waived, and stand to perform and abide by such order, direction and decree as may be made against them, or any of them, in the premises, and shall be meet and agreeable to equity.

THOMAS W. GREGORY,
Attorney-General of the United States.

ALBERT SCHOONOVER,
United States District Attorney.

E. J. JUSTICE,
Special Assistant to the Attorney General.

A. E. CAMPBELL,
Special Assistant to the Attorney General.

FRANK HALL,
Special Assistant to the Attorney General.

[13]

United States of America,
Southern District of California,—ss.

C. D. Hamel, being first duly sworn, deposes and says:

He is now, and has been since the first day of April, 1909, a special agent of the General Land Office of the United States, and since the first day of May, 1914, has been engaged in the investigation of facts relating to the lands withdrawn by the Presi-

dent as oil lands, and especially the lands withdrawn by order of September 27, 1909, and by the order of July 2, 1910. That from such examination of such lands and the facts ascertained in relation thereto, and from the examination of the records of the General Land Office and the local land offices of complainant in said State of California, and from the examination of court records and county records, and particularly from affidavits setting forth the facts, he is informed as to the matters and things stated in the foregoing complaint with reference to the particular lands therein described; and the matters therein stated are true, except as to such matters as are stated to be on information and belief, and as to those, affiant, after investigation, states that he believes them to be true.

C. D. HAMEL.

Subscribed and sworn to before me this 18th day of July, 1916.

[Seal]

T. L. BALDWIN,

Deputy Clerk U. S. District Court, Northern District of California. [14]

United States of America,
Southern District of California,—ss.

C. D. Hamel, being first duly sworn, deposes and says:

He is now, and has been since the first day of April, 1909, a special agent of the General Land Office of the United States, and since the first day of May, 1914, has been engaged in the investigation of facts relating to the lands withdrawn by the Presi-

dent as oil lands, and especially the lands withdrawn by order of September 27, 1909, and by the order of July 2, 1910. That from such examination of such lands and the facts ascertained in relation thereto, and from the examination of the records of the General Land Office and the local lands offices of complainant in said State of California, and from the examination of court records and county records, and particularly from affidavits setting forth the facts, he is informed as to the matters and things stated in the foregoing complaint with reference to the particular lands therein described; and the matters therein stated are true, except as to such matters as are stated to be on information and belief, and as to those, affiant, after investigation, states that he believes them to be true.

C. D. HAMEL.

Subscribed and sworn to before me this 18th day of July, 1916.

[Seal]

T. L. BALDWIN,

Deputy Clerk U. S. District Court, Northern District of California. [15]

[Endorsed]: No. A.-58. Equity. In the District Court of the United States for the Sou. Dist. of California, Nor. Div., Ninth Cir. United States of America, Plaintiff, vs. Dominion Oil Company et al., Defendants. Bill of Complaint. Filed Jul. 22, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. E. J. Justice, A. E. Campbell, Frank Hall, Special Assistants to the Attorney General. [16]

*In the District Court of the United States, in and for
the Southern District of California, Northern
Division, Ninth Circuit.*

No. A.-58—EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

**Answer of General Pipe-Line Company of
California.**

Comes now the defendant General Pipe-Line Company of California, and answers plaintiff's bill of complaint on file herein as follows:

I.

Alleges that General Pipe-Line Company of California is a corporation organized and existing under and by virtue of the laws of the State of California, and that it is and was at all times herein mentioned a public utility engaged in the business of transporting oil.

II.

Alleges that it claims no right, title or interest of any kind or character in or to the Northwest Quarter of Section 15, Township 31 South, Range 22 East, M. D. B. & M., except a right of way on and across said land for a pipe-line for the transportation of oil, and a telephone and telegraph line used in connection with the transportation of oil through said pipe-line.

III.

That this defendant is without knowledge as to any of the matters alleged in plaintiff's bill of complaint. [17]

WHEREFORE, defendant, General Pipe-Line Company of California, prays that a judgment and decree may be entered to the effect that General Pipe-Line Company of California has no right, title or interest in or to said land or in the oil contained therein, but that said decree may reserve to said General Pipe-Line Company of California the right to maintain and operate across said land a pipe-line for the transportation of oil, and to operate and maintain telephone and telegraph lines to be used in connection with the transportation of oil through said pipe-line.

GENERAL PIPE-LINE COMPANY OF
CALIFORNIA,

By C. R. STEVENS.

A. L. WEIL,

Solicitor for General Pipe-Line Company of California.

Received copy of within Answer this 23d day of August, 1916.

E. J. JUSTICE.

FRANK HALL.

A. E. CAMPBELL.

[Endorsed]: No. A.-58. United States District Court, Southern District of California, Northern Division, Ninth Circuit. United States of America, Plaintiff, vs. Dominion Oil Company, et al., Defend-

ants. Answer of General Pipe-Line Company of California. Filed Aug. 24, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. A. L. Weil, Attorney for Defendants. 1206 Alaska Commercial Building, San Francisco, Cal. [18]

*In the District Court of the United States, in and for
the Southern District of California, Northern
Division, Ninth Circuit.*

No. A.-58—EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Answer of General Petroleum Company.

Comes now the defendant, General Petroleum Company, objecting to the jurisdiction of the above-entitled court, and not waiving such objection, answers the bill of complaint on file in the above-entitled action as follows:

I.

Admits that General Petroleum Company is a corporation organized and existing under the laws of the State of California.

II.

Denies that plaintiff on the 27th day of September, 1909, or for a long time prior thereto, or any time since said date was or that it now is the owner

or entitled to the possession or enjoyment of the Northwest Quarter of Section 15, Township 31 South, Range 22 East, M. D. B. & M., or any part thereof.

III.

Denies that on the 27th day of September, 1909, the President of the United States, acting by or through the Secretary of the Interior, or otherwise, or under the authority legally invested in him so to do, duly or regularly withdrew and reserved, or withdrew or reserved all or any part of the land hereinbefore described from mineral exploration, or [19] from all or any forms of location or settlement or selection or filing or entry or patent or disposal under the mineral or nonmineral laws of the United States, or that since said date none of said lands have been subject to exploration for mineral oil, petroleum or gas. Admits that said land is not subject to the initiation of any rights under the public land laws of the United States.

IV.

Denies that General Petroleum Company at any time ever entered upon said land, or any part thereof, for the purpose of exploring said land for petroleum oil or gas, or that it ever explored said land for petroleum oil or gas.

V.

Alleges that this defendant is without knowledge as to any of the matters alleged in paragraph V of plaintiff's bill of complaint.

VI.

Alleges that this defendant is without knowledge

as to any of the matters alleged in paragraph VI of plaintiff's bill of complaint, except that it denies that it ever produced any oil or gas from said land, or that it was ever in possession thereof, but in that behalf, admits that it bought oil produced from said land.

VII.

Denies that General Petroleum Company ever entered on said land, or that it ever extracted oil or gas therefrom, or that it ever drilled any wells thereon, or that it trespassed on said lands, or asserted any claims thereto, except as hereinafter alleged, and denies that it threatens to, or that it will continue to extract oil or gas from said land, or any part thereof, or drill oil or gas wells thereon, or to operate the same or to extract oil or gas from said lands, or otherwise trespass on said lands, or commit waste thereon, [20] but in that behalf, this defendant alleges that it claims no right, title or interest in or to said land whatsoever, except that it claims a right of way for a pipe-line for the transportation of oil across said lands, and right of way for a pipe-line for the transportation of water across said lands.

VIII.

Alleges that this defendant claims no right, title or interest in or to said lands whatsoever, or any part thereof, except as hereinabove alleged.

IX.

Alleges that this defendant is without knowledge as to any of the matters alleged in paragraph IX of plaintiff's bill of complaint.

X.

Denies that General Petroleum Company claims said land under any alleged location notice, except as to the rights of way hereinabove stated.

XI.

Alleges that defendant is without knowledge as to the matters alleged in paragraph XI of plaintiff's bill of complaint.

XII.

Alleges that this defendant is without knowledge as to any of the matters alleged in paragraph XII of plaintiff's bill of complaint.

XIII.

Denies that plaintiff is without full and adequate remedy save in a court of equity, but alleges, on the contrary, that plaintiff has a full, adequate, complete and speedy remedy at law. [21]

And for a further and additional defense, this defendant alleges:

I.

That the Court has no jurisdiction of the subject matter of the action, and that the sole question involved is the right to the possession of said land, and damages for the removal of oil and that plaintiff has a plain, speedy and adequate remedy at law in ejectment, and for mesne profits.

II.

That the Court has no jurisdiction to determine either the title or right of possession of said land, or to render judgment for oil removed therefrom, for the reason that the plaintiff has a plain, speedy and adequate remedy at law.

III.

That the Court has no jurisdiction as to this defendant, for the reason that this defendant has never claimed any interest in said land, and never committed any waste thereon; that plaintiff has a plain, speedy and adequate remedy at law against it.

IV.

That this defendant purchased oil off of portions of said land in good faith, and for a valuable consideration, and paid the full current market price therefor; that this defendant was informed by the operating companies on said land prior to the purchase of said oil, and it honestly and in good faith believed, and it has ever since said time honestly and in good faith believed that the locators of said land were all *bona fide* locators, and that the operators and their grantors were *bona fide* occupants and claimants of said land on the 27th day of September, 1909, and in the diligent prosecution [22] of work leading to a discovery of oil on said day, and that they continued in the diligent prosecution of said work until discovery.

That this defendant has never had any knowledge, information or notice from the plaintiff, or from any other source, that there was any question as to the validity of the title to said land.

WHEREFORE, this defendant prays that plaintiff take nothing by its action, and that it be hence dismissed, and that in the event of judgment in favor of plaintiff and against the operating defendants for the possession of said land, a decree be made reserving to this defendant the right to maintain and op-

erate said pipe-line for the transportation of said oil and said pipe-line for the transportation of water.

GENERAL PETROLEUM COMPANY,

By C. R. STEVENS,

A. L. WEIL,

Solicitor for General Petroleum Company.

Received a copy of the within answer this 23d day of August, 1916.

E. J. JUSTICE.

A. E. CAMPBELL.

FRANK HALL.

[Endorsed]: No. A.-58. United States District Court, Southern District of California, Northern Division, Ninth Circuit. United States of America, Plaintiff, vs. Dominion Oil Company, et al., Defendants. Answer of General Petroleum Company. Filed Aug. 24, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. A. L. Weil, Attorney for Defendants, 1206 Alaska Commercial Building, San Francisco, Cal. [23]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

A.-58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Motion of Dominion Oil Company for Order to Strike Out.

Comes now Dominion Oil Company, a corporation, and one of the defendants named in the above-entitled and numbered suit, and moves the Court for an order striking from and out of the bill of complaint on file therein the following portions thereof, to wit:

1. That portion of paragraph II thereof reading as follows:

“and of the oil, petroleum, gas and all other minerals contained in said land.”

2. That portion of paragraph III thereof reading as follows:

“and under the authority legally invested in him so to do, duly and regularly,” “from mineral exploration,” “and since said last named date none of said lands have been subject to exploration for mineral oil, petroleum, or gas, occupation or the institution of any right under the public land laws of the United States.”

3. Those portions of paragraph IV reading as follows:

“and in violation of the proprietary and other rights of this plaintiff,” “and in violation of the laws of the United States and lawful orders and proclamations of the President of the United States,” “and particularly in violation of the said order of withdrawal of the 27th of September, 1909.” [24]

4. That portion of paragraph V reading as follows:

“and neither of them had acquired any rights on, or with respect to said land on or prior to said date.”

5. Those portions of paragraph VII reading as follows:

“and otherwise trespassing upon said lands, and asserting claims thereto,” “and otherwise trespass upon said lands,” “and commit waste thereon,” “and in interference with the policies of the complainant with respect to the conservation, use and disposition of said lands, and particularly the petroleum, oil and gas contained therein.”

6. Those portions of paragraph VIII reading as follows:

“But none of such location notices and claims are valid against complainant,” “and no rights have accrued to the defendants, or either of them, thereunder, either directly or mediately”; “but said claims so asserted cast a cloud upon the title of the complainant and wrongfully interfere with its operation and disposition of said land.”

7. That portion of paragraph IX reading as follows:

“a *bona fide* occupant or claimant of said land and.”

8. Those portions of paragraph XI reading as follows:

“the said location notice was filed and posted by or for the sole benefit of the defendant, British-American Oil Co. or for someone else other than

the persons whose names were used in said pretended location notice," "and the names of the pretended locators above set out were used to enable the defendant, British-American Oil Co. or some other person other than said persons whose names were so used to acquire more than 20 acres of mineral land," "in violation of the laws of the United States," "the said persons whose names were so used in said location notice were not *bona fide* locators," "and each of them was without an interest in the said location notice so filed," "and their names were not used to enable each of them or either of them to secure only 20 acres of land or patent therefor," "but each of said persons was a mere dummy, fraudulently and unlawfully used for the purposes alleged."

9. Those portions of paragraph XII reading as follows:

"that, because of the premises of this bill, none of the defendants have, or ever had any right, title or interest in or to, or lien upon said land, or any part thereof, or any right, title or interest in or to the petroleum, mineral oil, or gas deposited therein, or any right to extract the petroleum or mineral oil or gas from said land, or to convey and dispose of [25] the petroleum and gas so extracted, or any part thereof"; "on the contrary, the acts of those defendants who have entered upon said land and drilled oil wells and used and appropriated the petroleum and gas deposited therein, and assumed to sell and convey any interest in or to any part of said land,

were all in violation of the laws of the United States and the aforesaid order withdrawing and reserving said land," "and all of said acts were and are in violation of the rights of the plaintiff, and such acts interfere with the execution by complainant of its public policies with respect to said land."

Said motion will be made upon the ground that the portions of the bill of complaint above specified are, and each of them is, redundant, impertinent, surplusage and matter of law.

Said motion will be based upon the said bill of complaint, this motion, all the papers and records on file in the above-entitled and numbered suit, and on a notice of the time and place of this motion, served herewith.

Dated this 1st day of September, 1916.

J. R. PRINGLE,

Solicitor for Defendant Dominion Oil Company.

Recd. copy of within this 1st day of Sept. 1916.

A. E. CAMPBELL,

Sol. for Plff. [26]

[Endorsed]: A.-58. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America, Plaintiff, vs. Dominion Oil Company et al., Defendants. Motion to Strike. Filed Sep. 1, 1916. Wm. M. Van Dyke, Clerk. By T. F. Green, Deputy Clerk. Andrews, Toland & Andrews, 1030 Marsh-Strong Bldg., Los Angeles, Attorneys for ————. [27]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

A.-58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Motion of Dominion Oil Company for Dismissal.

Now comes Dominion Oil Company, a corporation, and one of the defendants named in the above-entitled and numbered suit, and moves the Court for an order dismissing the bill of complaint of plaintiff on file therein. Said motion will be made upon the following grounds:

I.

That this Court has no jurisdiction in this action as a court of equity.

II.

That no ground or grounds are stated in said bill of complaint to support a prayer for relief in equity.

III.

That there is an entire want of equity in said bill of complaint.

IV.

That it appears that said suit is one in ejectment brought by plaintiff out of possession against defendant in possession of the lands described in said bill of complaint, and for damages for past trespass,

and that all of the matters [28] and things in said bill of complaint as alleged are subjects of litigation of which a court of equity has no jurisdiction and for the redress of which plaintiff has a full, complete, speedy and adequate remedy in a court on equity.

V.

That it appears by plaintiffs own showing, by said bill of complaint, and from the allegations therein that plaintiff is not entitled to the relief prayed for or to any relief in equity as against this defendant.

VI.

That said bill of complaint is so uncertain and lacking in the averment of particulars and matters essential to an understanding thereof, as to make it impossible for this defendant or any of the defendants herein to adequately prepare a defense to the same, and that said uncertainties are as follows:

(a) That it does not appear on the face of said bill of complaint, nor can it be ascertained therefrom what part or portion or quantity of the lands described in said bill of complaint the defendants or any of them, and more particularly this defendant, has entered upon or which it, or which they are, now in possession and occupying.

(b) It is alleged in said bill of complaint that the defendants, Dominion Oil Company, General Petroleum Company and Bankline Oil Company will continue to extract oil and gas from the lands described and to drill oil and gas from said lands, and otherwise trespass on said lands in interference with the policies of the complainant with respect to the conservation, use and this possession of said lands, and

particularly the petroleum, oil and gas contained therein. But it does not allege in said bill of complaint nor can it be ascertained therefrom how or in what manner the said defendants or either or any of them will otherwise trespass upon said lands, nor is it alleged in said bill of complaint, nor can it be ascertained therefrom what the policies of the complainant [29] are with respect to the conservation, use and disposition of said lands which will be interfered with by the said last-named defendants or by any or either of them.

(c) It is alleged in said bill of complaint that each of the defendants herein claims some right, title or interest in said lands, or some part thereof, or in the oil petroleum, or gas extracted therefrom, or in or to the proceeds arising from the sale thereof, or in, by, or through purchase thereof; but it is not alleged in said bill of complaint, nor can it be ascertained therefrom, which of the said defendants, claim some right, title or interest in said lands, or some part thereof; which of said defendants claim some right, title, or interest in the oil, petroleum or gas extracted therefrom; which of said defendants claim some right, title or interest in or to the proceeds arising from the sale of oil, petroleum or gas; or which of said defendants claim some right, title, or interest in said lands or some part thereof, through or by purchase thereof; or which portion of said lands, if any, each or any of said defendants claim, or are in possession of or with reference whereto they or any of them are committing any of the acts charged in the complaint.

VII.

That the said bill of complaint is exhibited against this defendant and against a number of other defendants for several and distinct and independent matters which have no relation to each other and in which, or in the greater part *part* of which, this defendant is in no way interested or concerned, and ought not to be implicated or impleaded and in this behalf, defendant refers to the particulars hereinabove [30] in paragraph VI-c of this motion set forth and specified.

And this defendant moves the Court for an order dismissing the said bill of complaint of plaintiff on file herein as to it; the said defendant, upon the same grounds and each and all of them as hereinabove more particularly set out.

The said motion will be based on the said bill of complaint on file herein, on this motion, on all the papers and records on file herein.

And this defendant, Dominion Oil Company, prays the judgment of this Honorable Court whether it shall be compelled to make any answer to the said bill, that the said bill may be dismissed as to all of the defendants named therein and more particularly as to this defendant.

Dated this 1st day of September 1916.

J. R. PRINGLE,
Solicitor for Defendant, Dominion Oil Company.

Copy received this 1st day of Sept., 1916.

A. E. CAMPBELL,
Atty. for Plff.

[Endorsed]: A.-58. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America, Plaintiff, vs. Dominion Oil Company, et al., Defendants. Motion for Dismissal. Filed Sep. 1, 1916. Wm. M. Van Dyke, Clerk. By T. F. Green, Deputy Clerk. Andrews, Toland & Andrews, 1030 Marsh-Strong Bldg., Los Angeles. [31]

In the District Court of the United States in and for the Southern District of California, Northern Division, Ninth Circuit.

A.-58—EQUITY.

UNITED STATES OF AMERICA,

Complainant,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Motion to Transfer Cause from Equity Side of Court to Law Side.

Producers Transportation Company, British-American Oil Company, and North Midway Oil Company, appearing by their solicitors and counsel (as indicated at the close hereof), severally move this Honorable Court to transfer this cause from the equity side of this court to the law side, for the following grounds, to wit:

1. That it appears on the face of the bill of complaint filed in this action that complainant was with-

out possession of the premises described in the bill of complaint at the time of the filing of said bill of complaint and of the beginning of this action, and therefore this Court has no jurisdiction in equity to entertain or hear a bill of complaint to quiet title to said property.

2. That the pretended cause of action set forth in said bill of complaint is in its nature in ejectment and for trespass and conversion against each of the defendants named individually and separately and not jointly,—as to each and all of which complainant's claim has a full, plain speedy and adequate remedy at law. [32]

3. That the facts set forth in said bill of complaint do not show any ground of equitable jurisdiction or any right to equitable relief.

LEWIS W. ANDREWS,
THOS. O. TOLAND,
A. V. ANDREWS and

ANDREWS, TOLAND & ANDREWS,

Solicitors for Defendants, Producers Transportation Company, British-American Oil Company, and North Midway Oil Company, 916 Union Oil Building, Los Angeles, California.

[Endorsed]: No. A.-58. In the District Court of the United States, in and for the Southern District of California, Northern Division. United States of America, Complainant, vs. Dominion Oil Company et al., Defendants. Motion to Transfer Cause from Equity Side of Court to Law Side. Received copy of the within motion this 30 day of Sept., 1916. Robert O'Connor, Asst. U. S. Atty., Attorney for

Plaintiff. Filed Sept. 30, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Andrews, Toland & Andrews, 916-924 Union Oil Building, Los Angeles, Cal., Attorneys for certain defendants. [33]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

No. A.-58—EQUITY.

UNITED STATES OF AMERICA,

Complainant,

vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY et al.,

Defendants.

Motion of Northern Midway Oil Company et al. for Further and Better Statement of Claim.

Come now the defendants, British-American Oil Company, North Midway Oil Company and Producers Transportation Company, by their solicitors and counsel (as indicated at the close hereof) and make and file this motion for a further and better statement of complainant's claim, as follows:

These defendants move the Court for an order, under Equity Rule 20, directing the complainant to make and file and serve on these defendants a further and better statement of its claim, and further and better particulars of its said claim, in each of the respects hereinafter pointed out, to wit:

1st. By definitely stating what proprietary rights of the complainant are referred to and intended to be covered and described in the fourth subdivision of the bill of complaint.

2d. By definitely stating what "other rights" of complainant are referred to and intended to be specified in said fourth subdivision. [34]

3d. By definitely stating what "policies of complainant with respect to conservation, use and disposition of said land" are referred to and attempted to be described in the seventh subdivision of the bill of complaint.

4th. By definitely stating what "policies of complainant with respect to conservation" and as to "the petroleum, oil and gas contained" in said land are referred to in said seventh subdivision.

5th. By definitely stating what claims in or to said land, and what right, title and interest therein are asserted by the respective defendants.

6th. By definitely stating what claims in or to any of the oil, petroleum or gas extracted from said land, are asserted by either of the several defendants herein.

7th. By definitely stating what proceeds arising from the sale of any oil, petroleum or gas extracted from said lands or through or by purchase thereof, each of the defendants herein claims.

8th. By definitely stating what notice or notices of mining locations, and what conveyances, contracts or liens, directly or mediately from such pretended locators, are referred to in subdivision VIII of said bill of complaint.

9th. By definitely stating how or in what way the location notices or claims referred to in said subdivision VIII, cast any cloud upon complainant's title to said lands.

10th. By definitely stating why this suit is commenced to avoid multiplicity of actions.

11th. By definitely stating why the complainant has no plain, adequate or complete remedy at law as to each of these defendants. [35]

12th. By definitely stating whether these defendants or any or either of them were in possession of said lands at the time of the filing of said bill of complaint.

13th. By stating whether these defendants, or any or either of them, threaten to or will, unless restrained by the Court, commit any acts or do anything which will operate to the irreparable or other injury of the complainant.

ANDREWS, TOLAND & ANDREWS,
LEWIS W. ANDREWS,
T. O. TOLAND and
A. V. ANDREWS,

Solicitors for Defendants, British-American Oil Company, North Midway Oil Company and Producers Transportation Company, 916 Union Oil Bldg., Los Angeles.

[Endorsed]: No. A.-58—Equity. In the District Court of the United States, in and for the Southern District of California, Northern Division. United States of America, Complainant, vs. Dominion Oil Company, General Petroleum Company et al., De-

endants. Motion for Further and Better Statement of Claim. Filed Sep. 30, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Received copy of the within motions this 30 day of Sept. 1916. Robert O'Connor, Asst. U. S. Atty., Attorney for Plaintiff. Andrews, Toland & Andrews, 1030 Marsh-Strong Bldg., Los Angeles, Attorneys for British-American Oil Co. et al. [36]

In the District Court of the United States, in and for the Southern District of California, Northern Division, Ninth Circuit.

A.-58—EQUITY.

UNITED STATES OF AMERICA,

Complainant,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Motion of North Midway Oil Company et al. for Dismissal.

Producers Transportation Company, British-American Oil Company and North Midway Oil Company, appearing by their solicitors and counsel (as indicated at the close hereof), move this Honorable Court to dismiss the bill of complaint filed in this action for the following reasons and upon the following grounds, to wit:

I.

That the bill of complaint does not state facts suffi-

cient to constitute a cause of action against these defendants, or either of them, or to entitle the complainant to any relief whatever as against either of these defendants.

II.

That said bill of complaint does not show, nor does it allege that the complainant is in possession of the premises described in said bill, and shows upon the face of said bill that the complainant has a plain, speedy and adequate remedy at law.

III.

That said bill of complaint shows upon its face that said pretended cause of action in equity is without [37] equitable merit as against these defendants, and each of them.

IV.

That said complainant's claim, as alleged in said bill of complaint, discloses no equity, in that no effort is made to pay or allow the defendants or either of them for costs for improvements or expenditures in or upon said premises, and as to those of said defendants who are claimed to have produced oil from said premises, no offer is made of the cost of improvements or expenditures in producing said oil.

V.

That said bill of complaint shows upon its face that such cause of action, if any, as the complaint has against these defendants or either of them, is under an action at law in which defendants are entitled to trial by jury.

WHEREFORE, these defendants and each of them pray that as to them and each of them this ac-

tion be dismissed and that complainant take nothing.

LEWIS W. ANDREWS,
THOS. O. TOLAND,
A. V. ANDREWS,
ANDREWS, TOLAND & ANDREWS,
Solicitors for Defendants.

Producers Transportation Company, British-American Oil Company, and North Midway Oil Company, 916 Union Oil Building, Los Angeles, California. [38]

[Endorsed]: No. A.-58. In the District Court of the United States, in and for the Southern District of California, Northern Division. United States of America, Complainant, vs. Dominion Oil Company et al., Defendants. Motion to Dismiss. Filed Sep. 30, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Received copy of the within motion this 30th day of Sept. 1916. Robert O'Connor, Asst. U. S. Atty., Attorney for Plaintiff. Andrews, Toland & Andrews, 916-924 Union Oil Building, Los Angeles, Cal., Attorneys for certain defendants. [39]

*In the District Court of the United States, in and for
the Southern District of California, Northern
Division, Ninth Circuit.*

No. A.-58—EQUITY.

UNITED STATES OF AMERICA,

Complainant,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

**Motion of North Midway Oil Company et al. to
Strike Out.**

British-American Oil Company, North Midway Oil Company and Producers Transportation Company, appearing by their solicitors and counsel (as indicated at the close hereof), move this Honorable Court to strike out the portions of the bill of complaint filed herein, and each thereof, as hereinafter specified, upon the grounds and for the reasons hereinafter set forth.

I.

These defendants and each of them move the Court to strike out from paragraph III of said bill of complaint, the following words, "and under the authority legally vested in him so to do, duly and regularly," for the reason that said words amount to a conclusion of law and are not a pleading of fact.

II.

These defendants and each of them move the Court to strike out from said paragraph III of said complaint the following words: "And since said last-

named date none of said lands have been subject to exploration for mineral oil, petroleum or gas, occupation or the institution of any right under the public land laws of the [40] United States," for the reason that said words are a pleading of a claimed conclusion of law only and do not constitute any allegation or statement of fact.

III.

These defendants, and each of them, move the Court to strike out from paragraph VII of said bill of complaint the following words: "And in interference with the policies of the complainant with respect to the conversion, use and disposition of said lands and particularly the petroleum, oil and gas contained therein"—on the ground that said allegation is scandalous and impertinent and has no bearing whatever upon the issues of this case.

IV.

These defendants, and each of them, move the Court to strike out from paragraph XII of said bill of complaint the following words: "And such acts interfere with the execution by complainant of its public policies with respect to said lands," for the reason that said allegation and language, and every part thereof, are scandalous and impertinent and have no bearing whatever upon the issues of this case.

LEWIS W. ANDREWS,
THOS. O. TOLAND,
A. V. ANDREWS and

ANDREWS, TOLAND & ANDREWS,

Solicitors for Defendants Producers Transportation
Company, British-American Oil Company, and

North Midway Oil Company, 916 Union Oil Building, Los Angeles, California. [41]

[Endorsed]: No. A.-58. In the District Court of the United States, in and for the Southern District of California, Northern Division. United States of America, Complainant, vs. Dominion Oil Company et al., Defendants. Motion to Strike. Received copy of the within motion this 30th day of Sept., 1916. Robert O'Connor, Asst. U. S. Atty., Attorney for Plaintiff. Filed Sep. 30, 1916. Wm. V. Van Dyke, Clerk. R. S. Zimmerman, Deputy. Andrews, Toland & Andrews, 916-924 Union Oil Building, Los Angeles, Cal., Attorneys for certain defendants. [42]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. A.-58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, PRODUCERS TRANSPORTATION COMPANY, BRIT-

ISH-AMERICAN OIL COMPANY, NORTH
MIDWAY OIL COMPANY, SUSAN ELLI-
OTT, A. B. PERKEY, and F. J. ELLIOTT,
Defendants.

Answer of Independent Oil Producers Agency.

To the Judges of the District Court of the United States for the Southern District of California, Sitting Within and for the Northern Division of Said District.

Comes now the Independent Oil Producers Agency, a defendant in the above-entitled suit, and answering the bill of complaint as amended herein respectively admits, denies, avers and states as follows, to wit:

I.

Answering paragraph "I" of said bill of complaint this defendant is without knowledge as to the allegations in said paragraph or any of them. And, basing its denial upon such lack of knowledge, this defendant denies each and all of said allegations.

II.

Answering paragraph "II" of said bill of complaint this defendant states that it is without knowledge as to [43] the allegations in said paragraph or any of them. And, basing its denial upon such lack of knowledge, this defendant, Independent Oil Producers Agency, denies each and all of the said allegations.

III.

Answering paragraph "III" of said bill of complaint this defendant states that it is without knowledge as to the allegations in said paragraph or any

North Midway Oil Company, 916 Union Oil Building, Los Angeles, California. [41]

[Endorsed]: No. A.-58. In the District Court of the United States, in and for the Southern District of California, Northern Division. United States of America, Complainant, vs. Dominion Oil Company et al., Defendants. Motion to Strike. Received copy of the within motion this 30th day of Sept., 1916. Robert O'Connor, Asst. U. S. Atty., Attorney for Plaintiff. Filed Sep. 30, 1916. Wm. V. Van Dyke, Clerk. R. S. Zimmerman, Deputy. Andrews, Toland & Andrews, 916-924 Union Oil Building, Los Angeles, Cal., Attorneys for certain defendants. [42]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. A.-58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, PRODUCERS TRANSPORTATION COMPANY, BRIT-

ISH-AMERICAN OIL COMPANY, NORTH
MIDWAY OIL COMPANY, SUSAN ELLI-
OTT, A. B. PERKEY, and F. J. ELLIOTT,
Defendants.

Answer of Independent Oil Producers Agency.

To the Judges of the District Court of the United States for the Southern District of California, Sitting Within and for the Northern Division of Said District.

Comes now the Independent Oil Producers Agency, a defendant in the above-entitled suit, and answering the bill of complaint as amended herein respectively admits, denies, avers and states as follows, to wit:

I.

Answering paragraph "I" of said bill of complaint this defendant is without knowledge as to the allegations in said paragraph or any of them. And, basing its denial upon such lack of knowledge, this defendant denies each and all of said allegations.

II.

Answering paragraph "II" of said bill of complaint this defendant states that it is without knowledge as to [43] the allegations in said paragraph or any of them. And, basing its denial upon such lack of knowledge, this defendant, Independent Oil Producers Agency, denies each and all of the said allegations.

III.

Answering paragraph "III" of said bill of complaint this defendant states that it is without knowledge as to the allegations in said paragraph or any

of them. And, basing its denial upon such lack of knowledge, this defendant, Independent Oil Producers Agency, denies each and all of the said allegations.

IV.

Answering paragraph "IV" of said bill of complaint this defendant states that it is without knowledge as to the allegations in said paragraph or any of them. And, basing its denial upon such lack of knowledge, this defendant, Independent Oil Producers Agency, denies each and all of the said allegations.

V.

Answering paragraph "V" of said bill of complaint this defendant states that it is without knowledge as to the allegations in said paragraph or any of them. And, basing its denial upon such lack of knowledge, this defendant, Independent Oil Producers Agency, denies each and all of said allegations.

VI.

As to the allegations in said paragraph "VI" to wit:

"Some time in the latter part of the year 1910
* * * there was first produced minerals to
wit, petroleum and gas, on or from said land."
—this defendant, Independent Oil Producers Agency,
is without knowledge. And, basing its denial upon
such lack of knowledge, this defendant denies the
said allegation, all and singular. [44]

As to the allegation contained in said paragraph
"VI" to wit:

“Of the petroleum and gas so produced, large quantities thereof have been sold and delivered by the said defendant, Dominion Oil Company, to the Standard Oil Company, Independent Oil Producers Agency and Producers Transportation Company”;

—this defendant, Independent Oil Producers Agency, has no knowledge save and except as to oil or petroleum alleged to have been sold and delivered to the Independent Oil Producers Agency. As to the latter, this defendant, Independent Oil Producers Agency, denies that the Dominion Oil Company or any other company or person ever sold and delivered or sold at all any petroleum or gas or other product whatsoever to this defendant, Independent Oil Producers Agency, but this defendant, Independent Oil Producers Agency, admits that some of the petroleum above mentioned was delivered to the Independent Oil Producers Agency under and by virtue of and in accordance with a certain contract commonly known as a “sale contract,” a copy of which “sale contract” is hereto attached, marked Defendant Independent Oil Producers Agency Exhibit “A” and is hereby made a part hereof and is hereby expressly referred to.

This defendant alleges that the deliveries of said petroleum to this defendant began April 10th, 1913, and that the last delivery thereof ended June 15th, 1915; that between two said last mentioned dates this defendant received from said Dominion Oil Company a gross total of 192,866.63 barrels of petroleum. This defendant proceeded to sell said petroleum in

accordance with said "sale contract" for the benefit of said Dominion Oil Company and out of said gross total of oil delivered, sold therefrom a gross total of 179,161.39 barrels and paid the proceeds of said sales to the Dominion Oil Company, to wit: \$67,938.08; that there remained in storage and unsold on July 31st, 1916, a total of 10,702.48 barrels of said oil and that 3,002.76 barrels of said oil were [45] lost in the ordinary course by seepage and evaporation; that said gross total of 192,866.63 barrels of petroleum so admitted by this defendant to have been received from said property through the Dominion Oil Company is the only oil or product of any kind whatsoever at any time or times received by this defendant from said property through anyone; that all of said oil was so received and disposed of in accordance with the terms and conditions of said "sale contract" and not otherwise; that all of the transactions with which this defendant was connected covering the said oil or any thereof were without profit or expectation of profit to this defendant.

In that connection this defendant alleges as follows, to wit: That this defendant is and was at all the times mentioned in said bill of complaint a corporation organized under the laws of the State of California and has at all times conducted its business solely after the manner of a co-operative association acting without profit for itself or any of its stockholders or members being in the nature of a marketing agency operated for the mutual benefit of all oil producers, members thereof, having oil to sell; each of said members owning one and only one share of

the capital stock of this defendant and having a contractual relation with this defendant arising under what is known and is heretofore referred to as a "sale contract," which "sale contract" in each instance is substantially in the form of Exhibit "A" attached hereto. The defendant, Dominion Oil Company, is and was at all the time herein referred to a member of this defendant and has held a single share of the capital stock of the defendant corporation for the purposes above mentioned.

As to the remaining allegations in said paragraph "VI" this defendant, Independent Oil Producers Agency, is without knowledge. And, basing this denial upon said lack of knowledge this defendant denies each and all of the same. [46]

In each and every of the transactions of this defendant concerning said oil of said Dominion Oil Company this defendant has acted in the most perfect and absolute good faith and believed at all times the said Dominion Oil Company had a legal and equitable right to dispose of the oil from said property through this defendant in accordance with the terms of said "sale contract."

VII.

Answering paragraph "VII" of said bill of complaint this defendant states that it is without knowledge as to the allegations in said paragraph or any of them. And, basing its denial upon such lack of knowledge, this defendant, Independent Oil Producers Agency, denies each and all of the said allegations.

VIII.

This defendant claims no right or title or interest in said land or any part thereof or in the oil, petroleum or gas extracted therefrom or in or to the proceeds arising from the sale thereof or through or by purchase thereof—save and except such right or title or interest as may accrue legally and equitably under, by and in accordance with the terms and provisions of said “sale contract” above mentioned.

As to the allegations contained in said paragraph “VIII” to wit:

“But none of such location notices and claims are valid against complainant, and no rights have accrued to the defendants, or either of them, thereunder, either directly or mediately; nor have any minerals been discovered or produced on said land except as hereinbefore stated; but said claims so asserted cast a cloud upon the title of the complainant and wrongfully interfere with its operation and disposition of said land, to the great and irreparable injury of complainant; and the complainant is without redress or adequate remedy save by this suit, and this suit is necessary to avoid a multiplicity of actions”;

—this defendant, Independent Oil Producers Agency, is without [47] knowledge. And, basing its denial upon such lack of knowledge, denies the same all and singular.

IX.

Answering paragraph “IX” of said bill of complaint this defendant states that it is without knowl-

edge as to the allegations in said paragraph or any of them. And, basing its denial upon such lack of knowledge, this defendant, Independent Oil Producers Agency denies each and all the said allegations.

X.

Answering paragraph "X" of said bill of complaint this defendant states that it is without knowledge as to the allegations in said paragraph or any of them. And, basing its denial upon such lack of knowledge, this defendant, Independent Oil Producers Agency, denies each and all of the said allegations.

XI.

Answering paragraph "XI" of said bill of complaint this defendant states that it is without knowledge as to the allegations in said paragraph or any of them. And, basing its denial upon such lack of knowledge, this defendant, Independent Oil Producers Agency denies each and all of the said allegations.

XII.

Answering the allegations contained in said bill of complaint this defendant, Independent Oil Producers Agency, states that it is without knowledge as to the same or any thereof. And, basing its denial upon such lack of knowledge, denies the same all and singular save and except that this defendant, Independent Oil Producers Agency, denies that it has no lien upon said land or interest therein and in that behalf alleges that it has a lien and interest in said land, to wit the lien and interest specifically set forth

in said "sale contract" which is hereby referred [48] to for full particulars in that regard.

WHEREFORE, in consideration of the foregoing, this defendant prays that it may be adjudged and decreed:

1. That said "sale contract" is a valid and binding agreement between the parties thereto and that the same is a lien upon the land mentioned therein for the purposes thereof.

2. That the plaintiff take nothing from this defendant and that the said bill of complaint be dismissed as against this defendant with costs to this defendant.

3. And for such other and further relief as may seem just and proper in equity.

GEORGE W. LANE,

Attorney for Independent Oil Producers Agency.

[49]

State of California,

City and County of Los Angeles,—ss.

W. B. Robb, being first duly sworn, deposes and says: I am and was at all times herein mentioned, an officer of the said defendant, Independent Oil Producers Agency, to wit the secretary thereof; I have read the foregoing answer of said defendant, and know the contents thereof. The same is true of my own knowledge, except as to the matters therein stated on information or belief, and as to those matters I believe it to be true.

[Seal]

W. B. ROBB,
Secretary.

Subscribed and sworn to before me this 6th day of October, 1916.

HAZEL M. GILBERT,
Notary Public in and for the City and County of Los Angeles, State of California.

**Defendant Independent Oil Producers Agency
Exhibit "A."**

COPY.

Resolved, That this corporation forthwith execute and deliver a sale contract with the Independent Oil Producers Agency, a corporation, said contract to be for the term beginning on the first day of March, 1913, and ending on the 31st day of December, 1919; and to be for all petroleum produced by this corporation on lands operated by it in Kern County, California, in quantity not less than 1000 barrels per month, and the President and Secretary, for this corporation and as its act and deed, are authorized and directed to sign the corporate name and to affix the corporate seal thereto and to deliver said contract to said agency. [50] Said contract to contain all the terms and to be in the form of the following contract, to wit:

I, N. M. Crosett, Secretary of the Dominion Oil Co., a corporation, do hereby certify that the foregoing is a true copy of a resolution adopted at a duly called regular meeting of the Board of Directors of said corporation, held at the office of the company on the 20th day of January, 1913, at the hour of 3 P. M., at which meeting a quorum of said board were present and voting; and I do further certify that said

resolution has not been revoked and that the same is in effect at this date.

Witness my hand and the seal of said corporation, this 23d day of January, 1913.

[Seal]

N. M. CROSETT,
Secretary of Dominion Oil Co.

SALE CONTRACT.

THIS AGREEMENT, made the 21st day of January, 1913,

Between THE DOMINION OIL CO., a corporation, party of the first part, hereinafter designated the Producer, and the INDEPENDENT OIL PRODUCERS AGENCY, a corporation, party of the second part, hereinafter designated the Agency.

WITNESSETH for valuable and sufficient considerations moving from the Agency to the Producer, the Producer hereby agrees to drill, develop, and operate oil wells and to produce from and collect petroleum upon that certain real property situate in the County of Kern, State of California, described as follows, to wit: The South Half ($\frac{1}{2}$) of the South Half ($\frac{1}{2}$) of the Northwest Quarter ($\frac{1}{4}$) of Section 15, Township 31 South, Range 22 East, M. D. B. & M., Comprising 40 acres, for a period of years from the first day of March, 1913 to and including the 31st day of December, 1919, and [51] to deliver to said Agency for sale by it all petroleum produced from said land or any part thereof during the said period of years, save and except therefrom such petroleum as may be already contracted for at the time of the making of this contract. The Producer reserves the right to fulfill and complete all such outstanding con-

tracts for petroleum, including therein all petroleum payable as royalty and such petroleum as it may be necessary to use as fuel in the production of petroleum on said property. The Producer hereby guarantees that he has exhibited to the Agency all of such contracts and the same have been duly noted upon the Agency's books; and it is expressly stipulated by the Producer that there are no other contracts for petroleum outstanding and reserved.

The petroleum to be delivered hereunder by the Producer shall be in quantity not less than 1,000 barrels per month, and of a gravity not heavier than 13° degrees Baume at a temperature of sixty degrees Fahrenheit, and to contain not more than two (2) per cent of foreign substance. All said petroleum to be delivered to said Agency as soon as produced in the gauge tanks of the Producer upon said land and if required by the Agency all of said petroleum after being gauged, will be pumped by the Producer from said gauge tanks into any pipe-line on the property designated by the Agency, or in case said petroleum shall be stored for future sale that it will be pumped by the Producer into any storage tanks designated by the Agency, located within three (3) miles distant from said gauge tanks. In the event of the storage of said petroleum then the actual cost only of said storage shall be charged by the Agency, and such charges will be paid *pro rata* by the producer and other producers storing in the same tanks or reservoirs. All deliveries shall be based upon the gauge capacity of the storage tanks of the producers and all petroleum shall immediately upon delivery be [52]

the property of and the title thereto shall vest in the Agency.

The Producer agrees to operate, to their full capacity, all the wells upon said premises and any wells that may be drilled thereon during the life of this contract. And in the event the said minimum production cannot be maintained during said period, from the wells now upon said land, then, upon request therefor by the Agency, the Producer will drill such additional wells thereon as may be required to maintain the monthly production of such quantity, provided it is practicable to drill such additional wells and produce such minimum.

If for any reason the Producer is unable to meet the demand for petroleum made upon it by the Agency such Producer may at the option of the Agency be entitled at any future date to make up such difference between the amount called for and the amount supplied.

It is agreed on the part of the Producer that this contract shall run with and bind the land and every part thereof and all property of the Producer thereon or connected therewith and that the Agency shall have and is hereby given a lien upon all said property for the faithful and due performance by the Producer of all of the terms hereof upon the part of the Producer to be performed, and that the Agency shall also have and is hereby given a lien upon said property for the full amount of any sum which may become due the Agency hereunder and any damages that may arise or accrue hereunder or by reason of

the breach hereof by the Producer in favor of the Agency.

It is further agreed that in case of any breach of this contract on the part of the Producer the Agency may forthwith take possession of all of said property and operate the same with a view of complying with the obligations hereof toward the Agency and may charge the expense of such operation to the Producer. In case any person other than the said [53] Producer shall during the life of this contract occupy or be in the physical possession or control of any or all of said property, either with or without the consent of said Producer, it is understood and agreed that the Agency may at its option and without notice to the Producer recognize and deal with said parties in any manner it may see fit, and without any liability to the Producer therefor either under the terms of this contract or otherwise.

In case the Producer shall fail in any way whatsoever to fulfill and perform the obligations and conditions required to maintain for the benefit of the Agency, title and possession of said property whether under the terms of any lease, deed or contract affecting the said property or any provisions of law, or any law or regulation or otherwise it is expressly understood and agreed that the Agency may at its election immediately annul this contract or it may at its election proceed to fulfill or perform such conditions or obligations or terms necessary to maintain title and possession, and charge the same to the Producer, or deduct the cost and expenses thereof from any moneys of property which may be in or which may

come into its possession or under its control, and belonging to the Producer; and it may, at its option, compromise or settle any question or claims arising in any such connection in any manner which it may deem expedient—it being understood that the Agency may adopt any one or more of such options or may elect not to adopt any.

In case there shall be due the Agency or any person with whom the Agency may have dealt concerning such property or premises or any part thereof, any moneys or obligations, then and in such event the Agency may apply any money or property which may be in or which may come into its possession and which may belong to the Producer, to the liquidation of such claim and without any liability whatever to the Producer, but in such case a full accounting shall immediately be made [54] to such Producer.

The Producer agrees to comply with and hereby obligates itself to conform to all of the by-laws of the Agency, as well as any and all amendments thereto which may be adopted by the Agency during the life of this contract, it being understood that the said by-laws may be considered hereby to be made part and parcel of this contract.

The Producer and the Agency mutually agree that the Agency shall sell all petroleum produced by the Producer from the said land and deliver to the Agency hereunder in such lots as the Agency may determine, at the highest price obtainable therefor; all sales to be made under such contracts and on such terms as the Agency may deem advisable; and in conducting its business and making sales of said petro-

leum, the Agency shall have the authority to employ such agents, brokers or factors as it deems expedient, on such terms as it may agree upon. From the returns of such sales the Agency shall retain the sum of one-half a cent per barrel for all petroleum sold, accounting for and paying over to the Producer, when received by it, the difference between the selling price and the said amount of one-half a cent per barrel, and all storage, transportation and brokerage costs and other expenses chargeable against the Producer; Provided, however, such charge of one-half cent per barrel may be changed from time to time by the Board of Directors of the Agency at a meeting called for that purpose or at a regular meeting of said Board of Directors, but in no case shall such charge exceed the sum of two cents per barrel.

The Producer expressly agrees to be bound and is bound and obligated by each and all of the proceedings had [55] or taken by the Agency or to be hereafter had or taken by the Agency or its officers, touching or pertaining to the issuance of those Participation Certificates referred to in that certain resolution adopted by the Agency at a meeting of its Board of Directors held March 9th, 1912, which resolution is hereby referred to and made a part hereof, and including the execution of that certain contract and guaranty from the Agency to the Union Oil Company of California mentioned in the said Certificates.

The obligations of Producer regarding the said Participation Certificates and guaranty are understood to be the same in kind and extent as if Producer had expressly joined in all thereof at the time

of execution. But such obligations shall not be deemed to extend and do not extend beyond the oil under contract to the Agency by this sale contract or the proceeds thereof.

This contract or any part thereof, or any right arising thereunder, or any proceeds arising therefrom shall not be assigned or transferred, nor shall any of them be assigned or transferred, or assignable or transferable by the Producer, either voluntarily or by act of law save with the written consent of the Agency, it being expressly understood and agreed that the relations between the Producer and the Agency, arising or to arise hereunder are personal and unassignable.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective presidents and secretaries and their respective corporate seals to be affixed, all under due authorization, the day and year first above written.

[Seal]

DOMINION OIL CO.

By T. R. FINLEY,

President. [56]

And N. M. CROSSETT,

Secretary.

INDEPENDENT OIL PRODUCERS
AGENCY.

By L. P. ST. CLAIR,

President.

[Seal]

And W. B. ROBB,

Secretary.

State of California,
County of Los Angeles,—ss.

On this 30th day of July, in the year one thousand nine hundred and 13 A. D., before me, H. L. Foster, a notary public in and for said county, personally appeared L. P. St. Clair, known to me to be the President, and W. B. Robb, known to me to be the secretary of the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation within named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said county, the day and year in this certificate first above written.

[Seal]

H. L. FOSTER,

Notary Public in and for the County of Los Angeles,
State of California.

State of California,
County of Santa Barbara,—ss.

On this 23d day of January, in the year of our Lord one thousand nine hundred and thirteen, before me, C. U. Armstrong, a notary public in and for said county of Santa Barbara, State of California, residing therein, duly commissioned and sworn, personally appeared T. R. Finley and N. M. Crosett, known to me to be the president and secretary of the corporation that executed the within instrument, and acknowledged to me that such corporation [57] executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said county, the day and year in this certificate first above written.

[Seal] C. U. ARMSTRONG,
Notary Public in and for Santa Barbara County,
State of California.

I, the undersigned, secretary of the Dominion Oil Company, a corporation, the party of the first part in the foregoing instrument, do hereby certify that said instrument was executed under due authorization of a resolution duly passed by the Board of Directors of said corporation, which meeting was duly called, a majority of said directors being present and voting thereat, and that said resolution was duly entered in the minutes of said corporation.

In Witness Whereof, I have hereunto set my name and affixed the seal of said corporation.

[Seal] N. M. CROSETT,
Secretary.

I, the undersigned, secretary of the Independent Oil Producers Agency, a corporation, the party of the second part in the foregoing instrument, do hereby certify that said instrument was executed under due authorization of a resolution duly passed by the Board of Directors of said corporation, which meeting was duly called, a majority of said directors being present and voting thereat, and that said resolution was duly entered in the minutes of said corporation.

In Witness Whereof, I have hereunto set my name and affixed the seal of said corporation.

[Seal] W. B. ROBB,
Secretary. [58]

COPY.

Approved June 27, 1913.

UNION OIL COMPANY OF CALIFORNIA.

By W. L. STEWART,
Vice-Pres.

By GILES KELLOGG,
Secretary.

[Endorsed]: Sale Contract. Independent Oil Producers Agency with Dominion Oil Company. Dated January 21, 1913. Recorded at request of W. B. Robb, July 31, 1913, at 30 min. past 10 A. M. in Book 22 of Agreements, page 212, Kern County Records. Chas. A. Lee, Recorder.

[Endorsed]: Receipt of a copy of the within Answer of Independent Oil Producers Agency admitted this 9th day of October, 1916.

A. E. CAMPBELL,
Atty. for Comp.

In Equity—No. A.-58. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America, Plaintiff, vs. Dominion Oil Company et al., Defendants. Answer of Independent Oil Producers Agency. Filed Oct. 10, 1916. Wm. M. Van Dyke, Clerk. T. F. Green, Deputy. Lane, White & Elliott, Attorneys at Law, 1003 Nevada Bank Bldg., San Francisco, Calif. [59]

At a stated term, to wit, the special October term, A. D. 1916, of the District Court of the United States, Southern District of California, Northern Division, held at the courtroom thereof, in the city of San Francisco, on Monday, the eighteenth day of December, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable ROBERT S. BEAN, District Judge.

No. A.-58—EQUITY.

THE UNITED STATES OF AMERICA,

Complainants,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

**Minutes of Court — December 18, 1916 — Order
Denying Various Motions of Dominion Oil
Company.**

Frank Hall, Esq., special assistant to the U. S. Attorney General, appearing as counsel for the United States; counsel appearing for J. R. Pringle, Esq., on behalf of defendant Dominion Oil Company; on motion, it is ordered that this cause be, and the same hereby is submitted to the Court for its consideration and decision on the motion of defendant Dominion Oil Company to dismiss the bill of complaint, and also on the motion of said defendant to strike out certain portions of said bill of complaint, and also on the motion of said defendant to transfer said cause to the law side of this court, and

also on the motion of said defendant that complainants give further and better particulars of their claims; now, pursuant to the rulings of the Court on points of law in other cases upon similar motions, it is by the Court ordered that each and all of said motions of defendant Dominion Oil Company, namely, motion to transfer to the law side of this court, motion to dismiss the bill of complaint, motion to strike out portions of said bill of complaint and motion that complainants give further and better particulars of their claims, and like motions by defendants other than [60] Dominion Oil Company be, and each and all of said motions hereby are denied. [61]

*In the District Court of the United States, in and for
the Southern District of California, Northern
Division, Ninth Circuit.*

IN EQUITY—No. A.-58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Answer of Bankline Oil Company.

Comes now the defendant, Bankline Oil Company, objecting to the jurisdiction of the above-entitled court, and not waiving such objection, answers the bill of complaint on file in the above-entitled action as follows:

I.

Admits that Bankline Oil Company is a corporation organized and existing under and by virtue of the laws of the State of California.

II.

Denies that for a long time prior to, or on or at any time since the 27th day of September, 1909, plaintiff has been, or that it is now the owner of or entitled to the possession of the Northwest Quarter of Section 15, Township 31 South, Range 22 East, Mount Diablo Base and Meridian, or any part thereof, or of any of the oil or petroleum or gas or other mineral contained in said land.

III.

Denies that on the 27th day of September, 1909, or at any time, the President of the United States, acting by or through the Secretary of the Interior, or under the authority legally or otherwise vested in him so to do, or at all, duly or regularly, or at all withdrew or reserved all or any of the lands hereinabove described from mineral [62—63] exploration, or from all or any form of location or settlement, or selection, or filing, or entry, or patent, or occupation, or disposal under the mineral or non-mineral land laws or any laws of the United States, or that since said last-named date, none of said lands have been subject to exploration for mineral oil or petroleum, or gas, or occupation, or the institution of any rights under the public land laws of the United States; and in that behalf, alleged that the said lands, being occupied by a *bona fide* claimant

diligently at work, were not subject to any withdrawal.

IV.

Denies that in violation of any rights whatsoever of the plaintiff, or in violation of any law or any proclamation, the defendant, Dominion Oil Company, or General Petroleum Company, or Bankline Oil Company, entered upon said land subsequent to the 27th day of September, 1909, for the purpose of exploring said land for petroleum and gas, but alleges in that behalf that the predecessors in interest of this defendant entered upon said land long prior to September 27, 1909, for the purpose of exploring said land for petroleum and gas.

V.

Admits that no one had discovered any petroleum oil on said land prior to the 27th day of September, 1909, and admits that this defendant had not acquired any interest in said land prior to said date, but alleges in that behalf that the predecessors in interest of this defendant had acquired an interest in said land.

VI.

Denies that oil was discovered on said land for the first time in the latter part of the year 1910, but alleges that oil was discovered on said land in the month of December, 1909. [64]

VII.

Admits that this defendant is now extracting oil and gas from said land, but denies that it is drilling any oil or gas wells thereon or otherwise trespassing upon said land.

Admits that it asserts claims to said lands and will continue to extract oil therefrom, but denies that it will drill any oil or gas wells thereon, or otherwise trespass on said land, or do any waste thereon, and denies that it will do any act to the irreparable or any injury to plaintiff, or interfere with its policy or any policies of complainant with respect to the use or conservation or disposition of said lands, or with reference to the petroleum oil or gas contained therein.

VIII.

Denies that the locations under which this defendant claims are not valid as against complainant, or that no rights have accrued to this defendant.

Denies that any claims of this defendant cast any cloud upon the alleged title of complainant or wrongfully interfere with its operation or disposition of said land.

Denies that complainant is without redress or adequate remedy save by this suit, or that this suit is necessary to avoid a multiplicity of actions.

IX.

Denies that the predecessors in interest of this defendant were not *bona fide* occupants or claimants of said land in the diligent prosecution of work leading to a discovery of oil or gas on September 27, 1909.

X.

Admits that this defendant claims a leasehold interest in the North half of the South half of said Northwest Quarter of Section 15 under the location notice set out in [65] paragraph X of complain-

ant's Bill of Complaint and others.

XI.

Denies that said location notice was filed or posted for someone other than the persons whose names were used in said location notice, or that the names of said locators were used to enable the defendant British-American Oil Company or any other person to acquire more than twenty acres of mineral land, in violation of the laws of the United States, or at all.

Denies that said locators and each of them were not *bona fide* locators, or that they or any of them were without an interest in said location notice so filed, or that their names, or that the names of any of them were not used to enable each and all of them to secure twenty acres of land or patent therefor.

Denies that any of said persons was a mere dummy, or any dummy at all, or that the names of any of said persons were fraudulently or unlawfully used for any purpose whatsoever, and in that behalf this defendant alleges that said location notice was made for the benefit of more than eight persons, and that none of the persons for whose benefit said location was made had more than a twenty acre interest therein.

XII.

Denies that this defendant has no right, title or interest in and to said lands or in and to the petroleum deposited therein; denies that it has no right to extract the petroleum from said land or to convey or dispose of the petroleum so extracted.

Denies that any of the acts of this defendant were in violation of any law or laws of the United States,

or [66] of any order of withdrawal, or that any act or acts of this defendant were in violation of the rights or any right of the plaintiff, or that any act or acts of this defendant interfere with the execution by complainant of its public policies in respect to said land.

XIII.

Denies that plaintiff is without full and complete remedy in the premises save in a court of equity.

And for a further and additional defense, this defendant alleges:

I.

That this Court has no jurisdiction of the subject matter of the action; that the sole question involved is the right to the possession of said land and damages for the removal of oil therefrom, and that the plaintiff has a plain, speedy and adequate remedy at law in ejectment and for mesne profits.

II.

That this Court has no jurisdiction to determine either the title or right of possession of said land or render judgment for oil removed therefrom, for the reason that plaintiff has a plain, speedy and adequate remedy at law in ejectment, the defendant being in possession under the claim of right and claiming title to said land.

III.

That on or about the 1st day of January, 1909, said land was located by eight *bona fide* locators, each and every of them being then and there citizens of the United States; that the notice of location was posted on said land at said time, and the boundaries marked,

and copy of said location notice duly recorded in the office of the County Recorder of the County of Kern, State of California; that thereafter, the defendant, British-American Oil Company, acquired the [67] interest of said locators in said land, and thereafter the North Half of the South Half of said land was leased to the defendant the Bankline Oil Company, and the said Bankline Oil Company claims the said land last hereinabove described under and by virtue of the terms of said lease; that the said British-American Oil Company, and those claiming under it, was, on the 27th day of September, 1909, a *bona fide* occupant and claimant of said land, and diligently prosecuting work leading to a discovery of oil, and that said diligent prosecution or work was continued until oil was discovered thereon in paying quantities in the month of December, 1909.

IV.

That the said defendant, Bankline Oil Company, acquired its leasehold interest in said land in good faith, and for a valuable consideration, to wit, for the sum of \$40,000; that it had no knowledge, information or belief that the locators of said land were not *bona fide* locators, and that it was informed and believed that its predecessors in interest were diligently at work upon said land at the time of said withdrawal, and continued diligently at work until oil was discovered thereon.

V.

That more than five years prior to the commencement of the above-entitled action, this defendant and its predecessors in interest were in open, notorious

possession of the said land and the whole thereof, and diligently at work thereon, and have held and worked said claim during said period of time, and that during said period there was no adverse claim thereto.

That five years is the period of time prescribed by the statute of limitations for mining claims in the State of California, being the state in which said land is situated.

That defendant has never had any knowledge or notice that the complainant raised any question as to the validity of its title, and in reliance on said facts, this defendant has [67½] expended in excess of \$80,000 in improvements on said land.

That defendant demands a trial by jury of its right to the possession of said land and the minerals therein contained, and that have been heretofore removed therefrom.

WHEREFORE, plaintiff prays that complainant take nothing by its action, and that it be hence dismissed.

BANKLINE OIL COMPANY.

By A. L. WEIL,
Its Solicitor.

[Endorsed]: No. A.-58. United States District Court, Southern District of California, Northern Division, Ninth Circuit. United States of America, Plaintiff, vs. Dominion Oil Company et al., Defendants. Answer of Bankline Oil Company Filed Jan. 15, 1917. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. A. L. Weil, Attorney for

Defendants, 1206 Alaska Commercial Building, San Francisco, Cal. [68]

At a special term, to wit, the January, A. D. 1917, term of the District Court of the United States, within and for the Southern District of California, Northern Division, held at the courtroom thereof in Los Angeles, on Thursday, the 29th day of March, in the year of our Lord one thousand nine hundred and seventeen. Present: The Honorable BENJAMIN F. BLEDSOE, District Judge.

No. A.-58—EQUITY.

UNITED STATES OF AMERICA,

Complainants,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Minutes of Court—March 29, 1917—Order Setting Cause for Hearing on Plaintiff's Application to Amend Bill.

On motion of E. J. Justice, Esq., Special Assistant to the U. S. Attorney General, of counsel for the United States, it is ordered that, for hearing on complainants' motion for leave to amend the bill of complaint herein, this cause be, and the same hereby is continued until Wednesday, the 18th day of April, 1917, at 10 o'clock A. M., at San Francisco, California. [69]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. A.—58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, PRODUCERS TRANSPORTATION COMPANY, BRITISH-AMERICAN OIL COMPANY, NORTH MIDWAY OIL COMPANY, SUSAN ELLIOTT, A. B. PERKEY, and F. J. ELLIOTT,
Defendants.

Notice of Motion for Leave to File Amended Bill of Complaint.

To Felix Chappellet:

You will take notice that at 10 o'clock A. M., on Tuesday, the 17th day of April, A. D. 1917, in the Federal courtrooms of the Postoffice Building at San Francisco, California, the plaintiff will present to Honorable BENJAMIN F. BLEDSOE, Judge of the District Court of the United States for the Southern District of California, Northern Division, its motion for leave to file an amended bill of complaint

herein, a copy of which motion and said amended bill of complaint are [70] attached hereto and made a part hereof.

Dated at Los Angeles, Calif., this 9th day of April, 1917.

THOMAS W. GREGORY,
Attorney General,
E. J. JUSTICE,
Special Assistant to the Attorney General,
ALBERT SCHOONOVER,
United States Attorney,
Attorneys for Plaintiff. [71]

*In the District Court of the United States for the
Southern District of California, Northern Divi-
sion, Ninth Circuit.*

IN EQUITY—No. A-58.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PETRO-
LEUM COMPANY, BANKLINE OIL COM-
PANY, STANDARD OIL COMPANY, GEN-
ERAL PIPE-LINE COMPANY OF CALI-
FORNIA, INDEPENDENT OIL PRO-
DUCERS AGENCY, PRODUCERS TRANS-
PORTATION COMPANY, BRITISH
AMERICAN OIL COMPANY, NORTH
MIDWAY OIL COMPANY, SUSAN ELLI-
OTT, A. B. PERKEY, and F. J. ELLIOTT,
Defendants.

Motion for Leave to File Amended Bill of Complaint.

Comes now the plaintiff, by its solicitors, and respectfully represents that at the date of exhibiting the original bill herein, the plaintiff and its officials who were charged with the conduct of this suit were advised and believed that the lands herein involved were then claimed by and in the possession of the defendants, Dominion Oil Company, General Petroleum Company, and Bankline Oil Company, and so alleged in its said bill; that plaintiff and its said officials are informed and believe, and upon such information and belief represents unto this Honorable Court, that subsequent to the exhibiting of said original bill the General Petroleum Corporation commenced to and does now claim some interest and right of possession in and to said lands and the oil and gas that has been and is being extracted therefrom; and that plaintiff and its said officials [72] are informed and believe, and upon such information and belief represent, that John Barneson and Felix Chappellet were, at the date of exhibiting the original bill herein, ever since have been, and are now in the possession of and claiming some interest in the lands herein involved, and have been and are now extracting therefrom and appropriating to their own use and benefit the oil and gas contained in said lands. And plaintiff further represents unto the Honorable Court that the information respecting the occupancy and claim asserted by the said

John Barneson and Felix Chappellet first came to plaintiff and its said officials on March 20, A. D. 1917, and not before, and because of such lack of information with respect to said claims of said Barneson and Chappellet, the plaintiff did not join them as parties defendant in the original bill.

Plaintiff further represents that the said General Petroleum Corporation, John Barneson, and Felix Chappellet are proper and indispensable parties to a complete determination of this cause.

WHEREFORE, plaintiff prays that an order may be made and entered of record allowing it to file instanter an amended bill of complaint joining the said General Petroleum Corporation, John Barneson, and Felix Chappellet as parties defendant herein, and that the process of this Court may be issued and served upon said defendants commanding them to be and appear before this Court, at a date therein to be fixed, to answer to said amended bill or plead as they may be advised.

(Sig.) E. J. JUSTICE,

(Sig.) FRANK HALL,

Solicitors for Plaintiff. [73]

United States of America,
Northern District of California,
State of California,—ss.

Frank Hall, being first duly sworn, deposes and says:

That he is a Special Assistant to the Attorney General of the United States and one of the solicitors for the plaintiff in said cause; that he has

read the above and foregoing motion and is familiar with the contents thereof.

Affiant further says that he is informed as to the matters and things as stated in the foregoing motion, and that the matters therein stated are true, except as to such matters as are stated to be on information and belief, and as to those, affiant states that he believes them to be true.

(Sig.) FRANK HALL.

Subscribed and sworn to before me, this 23d day of March, 1917.

(Sig.) LYLE S. MORRIS,
Deputy Clerk U. S. District Court, Northern District of California. [74]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. A.-58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, GENERAL PETROLEUM CORPORATION, PRODUCERS TRANSPORTATION COMPANY, BRIT-

ISH-AMERICAN OIL COMPANY, NORTH
MIDWAY OIL COMPANY, SUSAN ELLI-
OTT, A. B. PERKEY, F. J. ELLIOTT,
JOHN BARNESON, and FELIX CHAP-
PELLET,

Defendants.

Amended Bill of Complaint.

To the Judges of the District Court of the United
States for the Southern District of California,
Sitting Within and for the Northern Division
of Said District:

Comes now the United States of America, by
Thomas W. Gregory, its Attorney General, leave of
Court being first had and obtained, and presents this
its amended bill in Equity against Dominion Oil
Company, General Petroleum Company, Bankline
Oil Company, Standard Oil Company, General Pipe-
Line Company of California, Independent Oil Pro-
ducers Agency, General Petroleum Corporation,
Producers Transportation Company, British Amer-
ican Oil Company, North Midway Oil Company,
Susan Elliott, A. B. Perkey, F. J. Elliott, John
Barneson, and Felix Chappellet (citizens and resi-
dents, respectively, as stated in the next succeeding
paragraph of this bill), and for cause of complaint
alleges: [75]

I.

Each of the defendants, Dominion Oil Company,
General Petroleum Company, Bankline Oil Com-
pany, Standard Oil Company, General Pipe-line
Company of California, Independent Oil Producers

Agency, General Petroleum Corporation, Producers Transportation Company, British American Oil Company, and North Midway Oil Company, now is and at all the times hereinafter mentioned as to it was a corporation organized under the laws of the State of California.

The defendants, Susan Elliott, A. B. Perkey, F. J. Elliott, John Barneson, and Felix Chappellet, now are and at all the times hereinafter mentioned as to them were residents and citizens of the State of California, as complainant is advised and believes and so alleges.

II.

For a long time prior to and on the 27th day of September, 1909, and at all times since said date, the plaintiff has been and now is the owner and entitled to the possession of the following described petroleum, or mineral oil, and gas lands, to wit:

The Northwest quarter of Section Fifteen (15), Township Thirty-one (31) South, Range Twenty-two (22) East, M. D. M.

and of the oil, petroleum, gas and all other minerals contained in said land.

III.

On the 27th day of September, 1909, the President of the United States, acting by and through the Secretary of the Interior and under the authority legally invested in him so to do, duly and regularly withdrew and reserved all of the land hereinbefore particularly described (together with other lands) from mineral exploration and from all forms of location or settlement, selection, filing, entry, patent, [76]

occupation or disposal, under the mineral and non-mineral land laws of the United States, and since said last-named date, none of said lands have been subject to exploration for mineral oil, petroleum or gas, occupation or the institution of any right under the public land laws of the United States.

IV.

Notwithstanding the premises and in violation of the proprietary and other rights of this plaintiff, and in violation of the laws of the United States and lawful orders and proclamations of the President of the United States, and particularly in violation of the said order of withdrawal of the 27th day of September, 1909, the defendants herein, to wit, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, General Petroleum Corporation, John Barneson, and Felix Chappellet, entered upon the said land hereinbefore particularly described long subsequent to the 27th day of September, 1909, for the purpose of exploring said land for petroleum and gas.

V.

Neither of said defendants, nor any person or corporation under or through whom they claim a right or interest in said land, had discovered petroleum oil, gas or other minerals on or in said land before said land was withdrawn, as hereinbefore stated, by said withdrawal order made on the 27th day of September, 1909, as hereinbefore set forth; and neither of said defendants had acquired any rights on or with respect to said lands, or any part thereof, on or prior to said date.

VI.

Long after the said order of withdrawal of September 27, 1909, to wit, some time in the latter part of the [77] year 1910, as plaintiff is informed and believes, there was first produced minerals, to wit, petroleum and gas, on or from said land; and the defendants, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, General Petroleum Corporation, John Barneson, and Felix Chappellet, have produced and caused to be produced therefrom large quantities of petroleum and gas, but the exact amount so produced plaintiff is unable to state. Of the petroleum and gas so produced, large quantities thereof have been sold and delivered by the said defendant, Dominion Oil Company, to the Standard Oil Company, Independent Oil Producers Agency and Producers Transportation Company; and the said defendants, John Barneson and Felix Chappellet, have sold and disposed of large quantities of oil and gas produced from said land to the said defendants General Petroleum Company and General Petroleum Corporation; and the said defendants, General Petroleum Company, Bankline Oil Company, General Petroleum Corporation, John Barneson, and Felix Chappellet, have sold and disposed of oil and gas produced from said land to others to plaintiff unknown. Plaintiff does not know and is therefore unable to state the amount of petroleum and gas which said defendants, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, General Petroleum Corporation, John Barneson, and Felix Chappellet, have

extracted from said land and sold, nor the amount extracted and now remaining undisposed of; nor the price received for such oil and gas as has been sold, and has no means of ascertaining the facts in the premises except from said defendants, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, Independent Oil Producers Agency, Producers Transportation Company, General Petroleum Corporation, [78] John Barneson, and Felix Chappellet, and therefore a full discovery from said defendants is sought herein.

VII.

Each of the defendants, to wit, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, General Petroleum Corporation, John Barneson, and Felix Chappellet, hereinbefore alleged to have entered upon said lands, are now extracting oil and gas from said lands, drilling oil and gas wells thereon and otherwise trespassing upon said lands and asserting claims thereto, and threaten to and will, unless restrained by an order of this Court, continue to extract oil and gas from said lands, and to drill oil and gas wells thereon, and operate the same and extract oil and gas from said lands, and otherwise trespass upon said lands, and commit waste thereon, all to the irreparable injury of complainant and in interference with the policies of the complainant with respect to the conservation, use and disposition of said lands, and particularly the petroleum, oil and gas contained therein.

VIII.

Each of the defendants claim some right, title or interest in said land or some part thereof, or in the oil, petroleum or gas extracted therefrom, or in or to the proceeds arising from the sale thereof, or through and by purchase thereof; and each of said claims is predicated upon or derived directly or mediately from some pretended notice or notices of mining locations, and by conveyances, contracts or liens directly or mediately from said such pretended locators. But none of such location notices and claims are valid against complainant, and no rights have accrued to the defendants, or either of them, thereunder, either directly or mediately; nor have any minerals been [79] discovered or produced on said land except as hereinbefore stated; but said claims so asserted cast a cloud upon the title of the complainant and wrongfully interfere with its operation and disposition of said land, to the great and irreparable injury of complainant; and the complainant is without redress or adequate remedy save by this suit, and this suit is necessary to avoid a multiplicity of actions.

IX.

Neither of the defendants, nor any person or corporation from whom they have derived any alleged interest, was, at the date of said order of withdrawal of September 27, 1909, nor was any other person at such date, a *bona fide* occupant or claimant of said land and in the diligent prosecution of work leading to the discovery of oil or gas.

X.

The defendants, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, General Petroleum Corporation, John Barneson, and Felix Chappellet, claim said lands under an alleged location notice which purports to have been posted and filed in the names of L. W. Andrews, Geo. C. Haldeman, Frank R. Strong, Stephen R. Dorsey, Wallace C. Dickinson, Warren F. McGrath, Geo. W. Dickinson and O. C. Gebauer, and known as the "Zee No. 8" Placer Mining Claim, bearing date January 1st, 1908.

XI.

The said location notice was filed and posted by or for the sole benefit of the defendant, British American Oil Company, or for someone else other than the persons whose names were used in said pretended location notice, and the names of the pretended locators above set out were used to enable the defendant, British American Oil Company, or some person, other than said persons whose names were [80] so used, to acquire more than twenty acres of mineral land in violation of the laws of the United States. The said persons whose names were so used in said location notice were not *bona fide* locators, and each of them was without an interest in said location notice so filed, and their names were not used to enable each of them, or either of them to secure only twenty acres of said land or patent therefor; but each of said persons was a mere dummy fraudulently and unlawfully used for the

purposes alleged, all of which complainant is informed and believes, and so alleges.

XII.

Except as in this bill stated, the plaintiff has no other knowledge or information concerning the nature of any other claims asserted by the defendants herein, or any of them, and therefore leaves said defendants to set forth their respective claims of interest.

In that behalf, the plaintiff alleges that, because of the premises of this bill, none of the defendants has or ever had any right, title or interest in or to, or lien upon said land, or any part thereof, or any right, title or interest in or to the petroleum, mineral oil or gas deposited therein, or any right to extract the petroleum or mineral oil or gas from said land, or to convey and dispose of the petroleum and gas so extracted, or any part thereof. On the contrary, the acts of those defendants who have entered upon said land and drilled oil wells and used and appropriated the petroleum and gas deposited therein, and assumed to sell and convey any interest in or to any part of said land, were all in violation of the laws of the United States and the aforesaid order withdrawing and reserving said land and all of said acts were and are in violation of the rights of the plaintiff, and such acts interfere with [81] the execution by complainant of its public policies with respect to said land.

XIII.

The present value of said land hereinbefore de-

scribed exceeds Three Hundred Thousand Dollars (\$300,000).

In consideration of the premises thus exhibited, and inasmuch as plaintiff is without full and adequate remedy in the premises save in a court of equity where matters of this nature are properly cognizable and relievable, plaintiff prays:

1. That said defendants, and each of them, may be required to make full, true and direct answer respectively to all and singular the matters and things hereinbefore stated and charged, and to fully disclose and state their claims to said land hereinbefore described, and to any and all parts thereof, as fully and particularly as if they had been particularly interrogated thereunto, but not under oath, answer under oath being hereby expressly waived:

2. That the said land may be declared by this Court to have been at all times from and after the 27th day of September, 1909, lawfully withdrawn from mineral exploration and from all forms of location, settlement, selection, filing, entry or disposal under the mineral or nonmineral public land laws of the United States; and that the said location notice was fraudulently filed and the said defendants did not acquire any right thereunder.

3. That said defendants, and each of them, may be adjudged and decreed to have no estate, right, title, interest or claim in or to said land, or any part thereof, or in or to any mineral or minerals or mineral deposits contained in or under said land, or any part thereof; and that all and singular of said land, together with all of [82] the minerals and min-

eral deposits, including mineral oil, petroleum and gas therein or thereunder contained, may be adjudged and decreed to be the perfect property of this plaintiff, free and clear of the claims of said defendants and each and every one of them.

4. That each and all of the defendants herein, their officers, agents, servants and attorneys, during the progress of this suit, and thereafter, finally and perpetually may be enjoined from asserting or claiming any right, title, interest, claim or lien in or to the said land, or any part thereof, or in or to any of the minerals or mineral deposits therein or thereunder contained; and that each and all of the defendants herein, their officers, agents, servants and attorneys, during the progress of this suit, and thereafter, finally and perpetually may be enjoined from going upon any part or portion of said land, and from in any manner using any of said land and premises, and from in any manner extracting, removing or using any of the minerals deposited in or under said land and premises, or any part or portion thereof, or any of the other natural products thereof, and from in any manner committing any trespass or waste upon any of said land or with reference to any of the minerals deposited therein or thereunder, or any of the other natural products thereof.

5. That an accounting may be had by said defendants, and each and every one of them, wherein said defendants, and each of them, shall make a full, complete, itemized and correct disclosure of the quantity of minerals (and particularly petroleum) removed or extracted or received by them, or either

of them, from said land, or any part thereof; and of any and all moneys or other property or thing of value received from the sale or disposition of [83] any and all minerals extracted from said land or any part thereof and of all rents and profits received under any sale, lease, transfer, conveyance, contract or agreement concerning said land, or any part thereof; and that the plaintiff may recover from said defendants, respectively, all damages sustained by the plaintiff in these premises.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, derricks, drills, pumps, storage-vats, pipes, pipe-lines, shops, machinery, tools and appliances of every character whatsoever thereon, belonging to or in the possession of said defendants, or any of them, which have been used or now are being used in the extraction, storage, transportation, refining, sale, manufacture or in any other manner in the production of petroleum or petroleum products or other minerals from said land, or any part thereof, for the purpose of continuing, and with full power and authority to continue, the operations on said land in the production and sale of petroleum and other minerals when such course is necessary to protect the property of the complainant against injury and waste, and for the preservation, protection and use of the oil and gas in said land, and the wells, derricks, pumps, tanks, storage vats, pipes, pipe-lines, houses, shops, tools, machinery and appliances being used by the defendants, their officers, agents or assigns, in the production, transportation, manufac-

ture or sale of petroleum or other minerals from said land, or any part thereof, and that such receiver may have the usual and general powers vested in receivers of courts of chancery.

7. That the plaintiff may have such other and further relief as in equity may seem just and proper.

To the end, therefore, that this plaintiff may [84] obtain the relief to which it is justly entitled in the premises, may it please your honors to grant unto the plaintiff a writ or writs of subpoena, issued by and under the seal of this Honorable Court, directed to said defendants herein, to wit: Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, General Pipe-line Company of California, Independent Oil Producers Agency, General Petroleum Corporation, Producers Transportation Company, British American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey, F. J. Elliott, John Barneson and Felix Chappellet, therein and thereby commanding them, and each of them, at a certain time and under a certain penalty therein to be named, to be and appear before this Honorable Court and then and there, severally, full, true and direct answers made to all and singular the premises, but not under oath, answer under oath being hereby expressly waived, and stand to perform and abide by such order, direction and decree as may be made against them, or any of them, in the premises, and

shall be meet and agreeable to equity.

THOMAS W. GREGORY,
Attorney General of the United States.

ALBERT SCHOONOVER,
United States District Attorney.

E. J. JUSTICE,
Special Assistant to the Attorney General.

A. E. CAMPBELL,
Special Assistant to the Attorney General.

FRANK HALL,
Special Assistant to the Attorney General.

[85]

United States of America,
Northern District of California,
State of California,—ss.

George Hayworth, being first duly sworn, deposes and says:

He is now and has been since the first day of February, 1914, Chief of Field Division of the General Land Office at San Francisco, California, and prior to that time was, since July, 1910, a special agent of the General Land Office doing field work in California, and much of said work has been done in the investigation of facts relating to the lands withdrawn by the President as oil lands, and especially the lands withdrawn by order of September 27, 1909, and by the order of July 2, 1910.

That from examination of such lands, or the facts in relation thereto obtained by him or by special agents acting under his direction as such Chief of Field Division, and from examination of the records of the General Land Office, and the local land offices

of plaintiff in said State of California, he is informed as to the matters and things as stated in the complaint with reference to the particular lands therein described; and the matters therein stated are true, except as to such matters as are alleged upon information and belief, and as to those, affiant after investigation, states he believes them to be true.

GEORGE HAYWORTH.

Subscribed and sworn to before me, this 23 day of March, 1917.

(Sig.) C. W. CALBREATH,
Deputy Clerk U. S. District Court, Northern District of California. [86]

[Endorsed]: Form No. 680. In Equity—No. A.-58. In the District Court of the United States, for the Southern Dist. of California, Northern Division. United States of America, Plaintiff, vs. Dominion Oil Co. et al., Defendants. Notice of Motion for Order Allowing the Filing of an Amended Bill of Complaint. Filed April 11, 1919. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk.

Due service and receipt of a copy of the within notice of motion is hereby admitted this 9th day of April, 1917.

(Signed) F. CHAPPELLET. [87]

*In the District Court of the United States, in and for
the Southern District of California, Northern
Division, Ninth Circuit.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Motion of John Barneson for Dismissal.

Comes now the defendant, John Barneson, and moves to dismiss the amended bill of complaint in the above-entitled action, and alleges:

I.

That said amended bill of complaint does not state facts sufficient to constitute a cause of action in equity against this defendant.

II.

That it appears on the face of said amended bill of complaint that the defendants are in possession of said property under claim of title, and that plaintiff has a plain, speedy and adequate remedy at law in ejectment for mesne profits, and that a court of equity has no jurisdiction of said action.

III.

That a court of equity has no jurisdiction to determine the title or right of possession or for damages for oil removed, for the reason that it appears on the face of the said amended bill of complaint that defendants are in possession of said property, and are holding the same under claim of right;

WHEREFORE, defendant John Barneson prays that said amended bill of complaint may be dismissed. [88]

A. L. WEIL,
Solicitor for Defendant John Barneson.

[Endorsed]: No. A.-58—In Equity. United States District Court, Southern District of California, Northern Division, 9th Circuit. United States of America, Plaintiff, vs. Dominion Oil Company et al., Defendants. Motion of John Barneson to Dismiss Amended Bill of Complaint. Filed Apr. 23, 1917. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. A. L. Weil, Attorney at Law, 1202 Alaska Commercial Building, San Francisco, Cal. [89]

In the District Court of the United States, in and for the Southern District of California, Northern Division, Ninth Circuit.

No. A.-58—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Disclaimer of General Petroleum Corporation.

Comes now the General Petroleum Corporation, and alleges that it has not now, and never had had or claimed any right, title or interest of any kind or character in or to any part of the Northwest Quarter

of Section Fifteen (15), Township Thirty-one (31) South, Range Twenty-two (22) East, M. D. B. & M.

A. L. WEIL,

Solicitor for Defendant General Petroleum Corp.

[Endorsed]: No. A.-58. United States District Court, Southern District of California, Northern Division, Ninth Circuit. United States of America, Plaintiff, vs. Dominion Oil Company et al., Defendants. Disclaimer of General Petroleum Corporation. Filed Apr. 26, 1917. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. A. L. Weil, Attorney for Defendants, 1206 Alaska Commercial Building, San Francisco, Cal [90]

In the District Court of the United States, in and for the Southern District of California, Northern Division, Ninth Circuit.

No. A.-58—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Disclaimer of Felix Chappellet.

Comes now Felix Chappellet, and alleges that he has not now and never has had or claimed any right, title or interest of any kind or character in or to any part of the Northwest quarter of Section Fif-

teen (15), Township Thirty-one (31) South, Range Twenty-two (22) East, M. D. B. & M.

A. L. WEIL,
Solicitor for Defendant Felix Chappellet.

[Endorsed]: No. A.-58—In Equity. United States of America, Southern District of California, Northern Division, 9th Circuit. United States of America, Plaintiff, vs. Dominion Oil Company et al., Defendant. Disclaimer of Felix Chappellet. Filed Apr. 26, 1917. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. A. L. Weil, Attorney at Law, 1202 Alaska Commercial Building, San Francisco, Cal. [91]

At a stated term, to wit, the January Term, A. D. 1917, of the District Court of the United States of America, in and for the Southern District of California, Northern Division, held at the courtroom thereof, in the city of Los Angeles, on Saturday, the twenty-eighth day of April, in the year of our Lord one thousand nine hundred and seventeen. Present: The Honorable BENJAMIN F. BLEDSOE, District Judge.

No. A.-58—EQUITY.

THE UNITED STATES OF AMERICA,

Complainants,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Minutes of Court—April 28, 1917—Order Allowing Plaintiff to File Amended Bill of Complaint.

On motion of Albert Schoonover, Esq., U. S. Attorney, of counsel for the United States, it is ordered that complainants be, and they hereby are allowed to file herein an amended bill of complaint making John Barneson, William Walker and General Petroleum Corporation additional defendants in this cause, a copy of said amended bill of complaint to be served on each of the defendants herein who have appeared in this cause. [92]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. A.-58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, GENERAL PETROLEUM CORPORATION, PRODUCERS TRANSPORTATION COMPANY, BRITISH-AMERICAN OIL COMPANY, NORTH MIDWAY OIL COMPANY,

SUSAN ELLIOTT, A. B. PERKEY, F. J. ELLIOTT, JOHN BARNESON, and WILLIAM WALKER,

Defendants.

Amended Bill of Complaint.

To the Judges of the District Court of the United States for the Southern District of California, Sitting Within and for the Northern Division of said District:

Comes now the United States of America, by Thomas W. Gregory, its Attorney General leave of Court being first had and obtained, and presents this its amended bill in equity against Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, General Pipe-Line Company of California, Independent Oil Producers Agency, General Petroleum Corporation Producers Transportation Company, British-American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey, F. J. Elliott, John Barneson, and William Walker (citizens and residents respectively, as stated in the next succeeding paragraph of this bill), and for cause of complaint alleges: [93]

I.

Each of the defendants, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, General Pipe-Line Company of California, Independent Oil Producers Agency, General Petroleum Corporation, Producers Transportation Company, British-American Oil Company, and North Midway Oil Company, now is

and at all the times hereinafter mentioned as to it was a corporation organized under the laws of the State of California.

The defendants, Susan Elliott, A. B. Perkey, F. J. Elliott, John Barneson, and William Walker, now are and at all the times hereinafter mentioned as to them were residents and citizens of the State of California, as complainant is advised and believes and so alleges.

II.

For a long time prior to and on the 27th day of September, 1909, and at all times since said date, the plaintiff has been and now is the owner and entitled to the possession of the following described petroleum, or mineral oil, and gas lands, to wit:

The Northwest quarter of Section Fifteen (15), Township Thirty-one (31) South, Range Twenty-two (22) East, M. D. M., and of the oil, petroleum, gas and all other minerals contained in said land.

III.

On the 27th day of September, 1909, the President of the United States, acting by and through the Secretary of the Interior and under the authority legally invested in him so to do, duly and regularly withdrew and reserved all of the land hereinbefore particularly described (together with other lands) from mineral exploration and from all forms of location or settlement, selection, filing, entry, patent, [94] occupation or disposal, under the mineral and nonmineral land laws of the United States, and since said last-named date, none of said lands have been

subject to exploration for mineral oil, petroleum or gas, occupation or the institution of any right under the public land laws of the United States.

IV.

Notwithstanding the premises and in violation of the proprietary and other rights of this plaintiff, and in violation of the laws of the United States and lawful orders and proclamations of the President of the United States, and particularly in violation of the said order of withdrawal of the 27th day of September, 1909, the defendants herein, to wit, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, General Petroleum Corporation, John Barneson, and William Walker, entered upon the said land hereinbefore particularly described long subsequent to the 27th day of September, 1909, for the purpose of exploring said land for petroleum and gas.

V.

Neither of said defendants, nor any person or corporation under or through whom they claim a right or interest in said land, had discovered petroleum oil, gas or other minerals on or in said land before said land was withdrawn, as hereinbefore stated, by said withdrawal order made on the 27th day of September, 1909, as hereinbefore set forth; and neither of said defendants had acquired any rights on or with respect to said lands, or any part thereof, on or prior to said date.

VI.

Long after the said order of withdrawal of September 27, 1909, to wit, some time in the latter part

of the [95] year 1910, as plaintiff is informed and believes, there was first produced minerals, to wit, petroleum and gas, on or from said land; and the defendants, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, General Petroleum Corporation, John Barneson, and William Walker have produced and caused to be produced therefrom large quantities of petroleum and gas, but the exact amount so produced plaintiff is unable to state. Of the petroleum and gas so produced, large quantities thereof have been sold and delivered by the said defendant, Dominion Oil Company, to the Standard Oil Company, Independent Oil Producers Agency and Producers Transportation Company; and the said defendants, John Barneson and William Walker have sold and disposed of large quantities of oil and gas produced from said land to the said defendants, General Petroleum Company and General Petroleum Corporation; and the said defendants, General Petroleum Company, Bankline Oil Company, General Petroleum Corporation, John Barneson, and William Walker have sold and disposed of oil and gas produced from said land to others to plaintiff unknown. Plaintiff does not know and is therefore unable to state the amount of petroleum and gas which said defendants, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, General Petroleum Corporation, John Barneson, and William Walker, have extracted from said land and sold, nor the amount extracted and now remaining undisposed of; nor the price received for such oil and gas as has been sold, and has

no means of ascertaining the facts in the premises except from said defendants, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, Independent Oil Producers Agency, Producers Transportation Company, General Petroleum Corporation, [96] John Barneson, and William Walker, and therefore a full discovery from said defendants is sought herein.

VII.

Each of the defendants, to wit, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, General Petroleum Corporation, John Barneson, and William Walker hereinbefore alleged to have entered upon said lands, are now extracting oil and gas from said lands, drilling oil and gas wells thereon and otherwise trespassing upon said lands and asserting claims thereto, and threaten to and will, unless restrained by an order of this Court, continue to extract oil and gas from said lands and to drill oil and gas wells thereon, and operate the same and extract oil and gas from said lands, and otherwise trespass upon said lands, and commit waste thereon, all to the irreparable injury of complainant and in interference with the policies of the complainant with respect to the conservation, use and disposition of said lands, and particularly the petroleum, oil and gas contained therein.

VII.

Each of the defendants claims some right, title or interest in said land or some part thereof, or in the oil, petroleum or gas extracted therefrom, or in or to the proceeds arising from the sale thereof, or through

and by purchase thereof; and each of said claims is predicated upon or derived directly or mediately from some pretended notice or notices of mining locations, and by conveyances, contracts or liens directly or mediately from said such pretended locators. But none of such location notices and claims are valid against complainant, and no rights have accrued to the defendants, or either of them, thereunder, either directly or mediately; nor have any minerals been [97] discovered or produced on said land except as hereinbefore stated; but said claims so asserted cast a cloud upon the title of the complainant and wrongfully interfere with its operation and disposition of said land, to the great and irreparable injury of complainant; and the complainant is without redress or adequate remedy save by this suit, and this suit is necessary to avoid a multiplicity of actions.

IX.

Neither of the defendants, nor any person or corporation from whom they have derived any alleged interest, was, at the date of said order of withdrawal of September 27, 1909, nor was any other person at such date, a *bona fide* occupant or claimant of said land and in the diligent prosecution of work leading to the discovery of oil or gas.

X.

The defendants, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, General Petroleum Corporation, John Barneson, and William Walker claim said lands under an alleged location notice which purports to have been posted and filed in the names of L. W. Andrews, Geo. C.

Haldeman, Frank R. Strong, Stephen R. Dorsey, Wallace C. Dickinson, Warren F. McGrath, Geo. W. Dickinson and O. C. Gebauer, and known as the "Zee No. 8" Placer Mining Claim, bearing date January 1st, 1908.

XI.

The said location notice was filed and posted by or for the sole benefit of the defendant, British American Oil Company, or for someone else other than the persons whose names were used in said pretended location notice, and the names of the pretended locators above set out were used to enable the defendant, British American Oil Company, or some person, other than said persons whose names were [98] so used, to acquire more than twenty acres of mineral land in violation of the laws of the United States. The said persons whose names were so used in said location notice were not *bona fide* locators, and each of them was without an interest in said location notice so filed, and their names were not used to enable each of them, or either of them, to secure only twenty acres of said land or patent therefor; but each of said persons was a mere dummy fraudulently and unlawfully used for the purposes alleged, all of which complainant is informed and believes, and so alleges.

XII.

Except as in this bill stated, the plaintiff has no other knowledge or information concerning the nature of any other claims asserted by the defendants herein, or any of them, and therefore leaves said defendants to set forth their respective claims of interest.

In that behalf, the plaintiff alleges that, because of the premises of this bill, none of the defendants has or ever had any right, title or interest in or to, or lien upon said land, or any part thereof or any right title or interest in or to the petroleum mineral oil or gas deposited therein or any right to extract the petroleum or mineral oil or gas from said land, or to convey and dispose of the petroleum and gas so extracted, or any part thereof.

On the contrary the acts of those defendants who have entered upon said land and drilled oil wells and used and appropriated the petroleum and gas deposited therein and assumed to sell and convey any interest in or to any part of said land, were all in violation of the laws of the United States and the aforesaid order withdrawing and reserving said land; and all of said acts were and are in violation of the rights of the plaintiff and such acts interfere with [99] the execution by complainant of its public policies with respect to said land.

XIII.

The present value of said land hereinbefore described exceeds Three Hundred Thousand Dollars (\$300,000).

In consideration of the premises thus exhibited, and inasmuch as plaintiff is without full and adequate remedy in the premises save in a court of equity where matters of this nature are properly cognizable and relievable, plaintiff prays:

1. That said defendants and each of them may be required to make full, true and direct answer respectively to all and singular the matters and things

hereinbefore stated and charged, and to fully disclose and state their claims to said land hereinbefore described, and to any and all parts thereof, as fully and particularly as if they had been particularly interrogated thereunto, but not under oath, answer under oath being hereby expressly waived.

2. That the said land may be declared by this Court to have been at all times from and after the 27th day of September, 1909, lawfully withdrawn from mineral exploration and from all forms of location settlement selection, filing, entry or disposal under the mineral or nonmineral public-land laws of the United States; and that the said location notice was fraudulently filed and the said defendants did not acquire any right thereunder.

3. That said defendants, and each of them, may be adjudged and decreed to have no estate, right, title, interest or claim in or to said land, or any part thereof, or in or to any mineral or minerals or mineral deposits, including mineral oil, petroleum and part thereof; and that all and singular of said land, together with all of [100] the minerals and mineral deposits, including mineral oil, petroleum and gas therein or thereunder contained, may be adjudged and decreed to be the perfect property of this plaintiff, free and clear of the claims of said defendants and each and every one of them.

4. That each and all of the defendants herein, their officers, agents, servants and attorneys, during the progress of this suit, and thereafter, finally and perpetually may be enjoined from asserting or claiming any right, title, interest, claim or lien in or to the

said land, or any part thereof, or in or to any of the minerals or mineral deposits therein or thereunder contained; and that each and all of the defendants herein, their officers, agents, servants and attorneys, during the progress of this suit, and thereafter, finally and perpetually may be enjoined from going upon any part or portion of said land, and from in any manner using any of said land and premises, and from in any manner extracting, removing or using any of the minerals deposited in or under said land and premises, or any part or portion thereof, or any of the other natural products thereof, and from in any manner committing any trespass or waste upon any of said land or with reference to any of the minerals deposited therein or thereunder, or any of the other natural products thereof.

5. That an accounting may be had by said defendants, and each and every one of them, wherein said defendants, and each of them, shall make a full, complete, itemized and correct disclosure of the quantity of minerals (and particularly petroleum) removed or extracted or received by them, or either of them, from said land, or any part thereof; and of any and all moneys or other property or thing of value received from the sale or disposition of [101] any and all minerals extracted from said land or any part thereof and of all rents and profits received under any sale, lease, transfer, conveyance, contract or agreement concerning said land, or any part thereof; and that the plaintiff may recover from said defendants, respectively, all damages sustained by the plaintiff in these premises.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, derricks, drills, pumps, storage-vats, pipes, pipe-lines, shops, machinery, tools and appliances of every character whatsoever thereon, belonging to or in the possession of said defendants, or any of them, which have been used or now are being used in the extraction, storage, transportation, refining, sale, manufacture or in any other manner in the production of petroleum or petroleum products or other minerals from said land, or any part thereof, for the purpose of continuing, and with full power and authority to continue, the operations on said land in the production and sale of petroleum and other minerals when such course is necessary to protect the property of the complainant against injury and waste, and for the preservation, protection and use of the oil and gas in said land, and the wells, derricks, pumps, tanks, storage-vats, pipes, pipe-lines, houses, shops, tools, machinery and appliances being used by the defendants, their officers, agents or assigns, in the production, transportation, manufacture or sale of petroleum or other minerals from said land, or any part thereof, and that such receiver may have the usual and general powers vested in Receivers of Courts of Chancery.

7. That the plaintiff may have such other and further relief as in equity may seem just and proper.

To the end, therefore, that this plaintiff may [102] obtain the relief to which it is justly entitled in the premises, MAY IT PLEASE YOUR HON-

ORS to grant unto the plaintiff a writ or writs of subpoena, issued by and under the seal of this Honorable Court, directed to said defendants herein, to wit: Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, General Pipe-Line Company of California, Independent Oil Producers Agency, General Petroleum Corporation, Producers Transportation Company, British American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey, F. J. Elliott, John Barneson, and William Walker therein and thereby commanding them, and each of them, at a certain time and under a certain penalty therein to be named, to be and appear before this Honorable Court and then and there, severally, full, true and direct answers make to all and singular the premises, but not under oath, answer under oath being hereby expressly waived, and stand to perform and abide by such order, direction and decree as may be made against them, or any of them, in the premises, and shall be meet and agreeable to equity.

T. W. GREGORY,

Attorney General of the United States.

ALBERT SCHOONOVER,

United States District Attorney.

E. J. JUSTICE,

Special Assistant to the Attorney General.

FRANK HALL,

Special Assistant to the Attorney General.

Special Assistant to the Attorney General.

United States of America,
Northern District of California,
State of California,—ss.

George Hayworth, being first duly sworn, deposes and says:

He is now and has been since the first day of February, 1914, Chief of Field Division of the General Land Office at San Francisco, California, and prior to that time was, since July, 1910, a Special Agent of the General Land Office doing field work in California, and much of said work has been done in the investigation of facts relating to the lands withdrawn by the President as oil lands, and especially the lands withdrawn by order of September 27, 1909, and by the order of July 2, 1910.

That from examination of such lands, or the facts in relation thereto obtained by him or by Special Agents acting under his direction as such Chief of Field Division, and from examinations of the records of the General Land Office, and the local land offices of plaintiff in said State of California, he is informed as to the matters and things as stated in the complaint with reference to the particular lands therein described; and the matters therein stated are true, except as to such matters as are alleged upon information and belief, and as to those, affiant after investigation, states he believes them to be true.

GEO. HAYWORTH.

Subscribed and sworn to before me this 23d day of March, 1917.

[Seal]

C. W. CALBREATH,
Deputy Clerk U. S. District Court, Northern District of California. [104]

[Endorsed]: In Equity—A.-58. In the District Court of the United States for the So. District of California, Northern Division. United States of America, Plaintiff, vs. Dominion Oil Company et al. Amended Bill of Complaint. Filed Apr. 28, 1917. Wm. M. Van Dyke, Clerk. By T. F. Green, Deputy Clerk. [105]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. A.-58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, GENERAL PETROLEUM CORPORATION, PRODUCERS TRANSPORTATION COMPANY, BRITISH-AMERICAN OIL COMPANY, NORTH

MIDWAY OIL COMPANY, SUSAN ELLIOTT, A. B. PERKEY, F. J. ELLIOTT, JOHN BARNESON and WILLIAM WALKER,
Defendants.

**Copy of Amended Bill of Complaint Showing
Service upon Defendants.**

To the Judges of the District Court of the United States for the Southern District of California, Sitting Within and for the Northern Division of Said District:

Comes now the United States of America, by Thomas W. Gregory, its Attorney General, leave of Court being first had and obtained, and presents this its amended bill in equity against Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, General Pipe-Line Company of California, Independent Oil Producers Agency, General Petroleum Corporation, Producers Transportation Company, British American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey, F. J. Elliott, John Barneson, and William Walker (citizens and residents, respectively, as stated in the next succeeding paragraph of this bill), and for cause of complaint alleges: [106]

I.

Each of the defendants, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, General Pipe-Line Company of California, Independent Oil Producers Agency, General Petroleum Corporation, Producers

Transportation Company. British-American Oil Company, and North Midway Oil Company, now is and at all the times hereinafter mentioned as to it was a corporation organized under the laws of the State of California.

The defendants, Susan Elliott, A. B. Perkey, F. J. Elliott, John Barneson, and William Walker, now are and at all the times hereinafter mentioned as to them were residents and citizens of the State of California, as complainant is advised and believes and so alleges.

II.

For a long time prior to and on the 27th day of September, 1909, and at all times since said date, the plaintiff has been and now is the owner and entitled to the possession of the following described petroleum, or mineral oil, and gas lands, to wit:

The Northwest quarter of Section Fifteen (15), Township Thirty-one (31) South, Range Twenty-two (22) East, M. D. M., and of the oil, petroleum, gas and all other minerals contained in said land.

III.

On the 27th day of September, 1909, the President of the United States, acting by and through the Secretary of the Interior and under the authority legally invested in him so to do, duly and regularly withdrew and reserved all of the land hereinbefore particularly described (together with other lands) from mineral exploration and from all forms of location or settlement, selection, filing, entry, patent, [107] occupation or disposal, under the mineral and non-

mineral land laws of the United States, and since said last-named date, none of said lands have been subject to exploration for mineral oil, petroleum or gas, occupation or the institution of any right under the public land laws of the United States.

IV.

Notwithstanding the premises and in violation of the proprietary and other rights of this plaintiff, and in violation of the laws of the United States and lawful orders and proclamations of the President of the United States, and particularly in violation of the said order of withdrawal of the 27th day of September, 1909, the defendants herein, to wit, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, General Petroleum Corporation, John Barneson, and William Walker, entered upon the said land hereinbefore particularly described long subsequent to the 27th day of September, 1909, for the purpose of exploring said land for petroleum and gas.

V.

Neither of said defendants, nor any person or corporation under or through whom they claim a right or interest in said land, had discovered petroleum oil, gas or other minerals on or in said land before said land was withdrawn, as hereinbefore stated, by said withdrawal order made on the 27th day of September, 1909, as hereinbefore set forth; and neither of said defendants had acquired any rights on or with respect to said lands, or any part thereof, on or prior to said date.

VI.

Long after the said order of withdrawal of September 27, 1909, to wit, some time in the latter part of the [108] year 1910, as plaintiff is informed and believes, there was first produced minerals, to wit, petroleum and gas, on or from said land; and the defendants, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, General Petroleum Corporation, John Barneson, and William Walker have produced and caused to be produced therefrom large quantities of petroleum and gas, but the exact amount so produced plaintiff is unable to state. Of the petroleum and gas so produced, large quantities thereof have been sold and delivered by the said defendant, Dominion Oil Company, to the Standard Oil Company, Independent Oil Producers Agency and Producers Transportation Company; and the said defendants, John Barneson and William Walker have sold and disposed of large quantities of oil and gas produced from said land to the said defendants, General Petroleum Company and General Petroleum Corporation; and the said defendants, General Petroleum Company, Bankline Oil Company, General Petroleum Corporation, John Barneson, and William Walker have sold and disposed of oil and gas produced from said land to others to plaintiff unknown. Plaintiff does not know and is therefore unable to state the amount of petroleum and gas which said defendants, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, General Petroleum Corporation, John Barneson, and William Walker, have ex-

tracted from said land and sold, nor the amount extracted and now remaining undisposed of; nor the price received for such oil and gas as has been sold, and has no means of ascertaining the facts in the premises except from said defendants, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, Independent Oil Producers Agency, Producers Transportation Company, General Petroleum Corporation, [109] John Barneson, and William Walker, and therefore a full discovery from said defendants is sought herein.

VII.

Each of the defendants, to wit, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, General Petroleum Corporation, John Barneson, and William Walker hereinbefore alleged to have entered upon said lands, are now extracting oil and gas from said lands, drilling oil and gas wells thereon and otherwise trespassing upon said lands and asserting claims thereto, and threaten to and will, unless restrained by an order of this Court, continue to extract oil and gas from said lands and to drill oil and gas wells thereon, and operate the same and extract oil and gas from said lands, and otherwise trespass upon said lands, and commit waste thereon, all to the irreparable injury of complainant and in interference with the policies of the complainant with respect to the conservation, use and disposition of said lands, and particularly the petroleum, oil and gas contained therein.

VIII.

Each of the defendants claims some right, title or interest in said land or some part thereof, or in the oil, petroleum or gas extracted therefrom, or in or to the proceeds arising from the sale thereof, or through and by purchase thereof; and each of said claims is predicated upon or derived directly or mediately from some pretended notice or notices of mining locations, and by conveyances, contracts or liens directly or mediately from said such pretended locators. But none of such location notices and claims are valid against complainant, and no rights have accrued to the defendants, or either of them, thereunder, either directly or mediately; nor have any minerals been [110] discovered or produced on said land except as hereinbefore stated; but said claims so asserted cast a cloud upon the title of the complainant and wrongfully interfere with its operation and disposition of said land, to the great and irreparable injury of complainant; and the complainant is without redress or adequate remedy save by this suit, and this suit is necessary to avoid a multiplicity of actions.

IX.

Neither of the defendants, nor any person or corporation from whom they have derived any alleged interest, was, at the date of said order of withdrawal of September 27, 1909, nor was any other person at such date, a *bona fide* occupant or claimant of said land and in the diligent prosecution of work leading to the discovery of oil or gas.

X.

The defendants, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, General Petroleum Corporation, John Barneson, and William Walker claim said lands under an alleged location notice which purports to have been posted and filed in the names of L. W. Andrews, Geo. C. Haldeman, Frank R. Strong, Stephen R. Dorsey, Wallace C. Dickinson, Warren F. McGrath, Geo. W. Dickinson and O. C. Gebauer, and known as the "Zee No. 8" Placer Mining Claim, bearing date January 1st, 1908.

XI.

The said location notice was filed and posted by or for the sole benefit of the defendant, British-American Oil Company, or for someone else other than the persons whose names were used in said pretended location notice, and the names of the pretended locators above set out were used to enable the defendant, British-American Oil Company, or some person, other than said persons whose names were [111] so used, to acquire more than twenty acres of mineral land in violation of the laws of the United States. The said persons whose names were so used in said location notice were not *bona fide* locators, and each of them was without an interest in said location notice so filed, and their names were not used to enable each of them, or either of them, to secure only twenty acres of said land or patent therefor; but each of said persons was a mere dummy fraudulently and unlawfully used for the purposes

alleged, all of which complainant is informed and believes, and so alleges.

XII.

Except as in this bill stated, the plaintiff has no other knowledge or information concerning the nature of any other claims asserted by the defendants herein, or any of them, and therefore leaves said defendants to set forth their respective claims of interest.

In that behalf, the plaintiff alleges that, because of the premises of this bill, none of the defendants has or ever had any right, title or interest in or to, or lien upon said land, or any part thereof, or any right, title or interest in or to the petroleum, mineral oil or gas deposited therein, or any right to extract the petroleum or mineral oil or gas from said land, or to convey and dispose of the petroleum and gas so extracted, or any part thereof. On the contrary, the acts of those defendants who have entered upon said land and drilled oil wells and used and appropriated the petroleum and gas deposited therein, and assumed to sell and convey any interest in or to any part of said land, were all in violation of the laws of the United States and the aforesaid order withdrawing and reserving said land; and all of said acts were and are in violation of the rights of the plaintiff, and such acts interfere with [112] the execution by complainant of its public policies with respect to said land.

XIII.

The present value of said land hereinbefore de-

scribed exceeds Three Hundred Thousand Dollars (\$300,000).

In consideration of the premises thus exhibited, and inasmuch as plaintiff is without full and adequate remedy in the premises save in a court of equity where matters of this nature are properly cognizable and relievable, plaintiff prays:

1. That said defendants, and each of them, may be required to make full, true and direct answer respectively to all and singular the matters and things hereinbefore stated and charged, and to fully disclose and state their claims to said land hereinbefore described, and to any and all parts thereof, as fully and particularly as if they had been particularly interrogated thereunto, but not under oath, answer under oath being hereby expressly waived.

2. That the said land may be declared by this Court to have been at all times from and after the 27th day of September, 1909, lawfully withdrawn from mineral exploration and from all forms of location, settlement, selection, filing, entry or disposal under the mineral or nonmineral public land laws of the United States; and that the said location notice was fraudulently filed and the said defendants did not acquire any right thereunder.

3. That said defendants, and each of them, may be adjudged and decreed to have no estate, right, title, interest or claim in or to said land, or any part thereof, or in or to any mineral or minerals or mineral deposits contained in or under said land, or any part thereof; and that all and singular of said land, together with all of [113] the minerals and min-

eral deposits, including mineral oil, petroleum and gas therein or thereunder contained, may be adjudged and decreed to be the perfect property of this plaintiff, free and clear of the claims of said defendants and each and every one of them.

4. That each and all of the defendants herein, their officers, agents, servants and attorneys, during the progress of this suit, and thereafter, finally and perpetually may be enjoined from asserting or claiming any right, title, interest, claim or lien in or to the said land, or any part thereof, or in or to any of the minerals or mineral deposits therein or thereunder contained; and that each and all of the defendants herein, their officers, agents, servants and attorneys, during the progress of this suit, and thereafter, finally and perpetually may be enjoined from going upon any part or portion of said land, and from in any manner using any of said land and premises, and from in any manner extracting, removing or using any of the minerals deposited in or under said land and premises, or any part or portion thereof, or any of the other natural products thereof, and from in any manner committing any trespass or waste upon any of said land or with reference to any of the minerals deposited therein or thereunder, or any of the other natural products thereof.

5. That an accounting may be had by said defendants, and each and every one of them, wherein said defendants, and each of them, shall make a full, complete, itemized and correct disclosure of the quantity of minerals (and particularly petroleum) removed or extracted or received by them, or either of them,

from said land, or any part thereof; and of any and all moneys or other property or thing of value received from the sale or disposition of [114] any and all minerals extracted from said land or any part thereof and of all rents and profits received under any sale, lease, transfer, conveyance, contract or agreement concerning said land, or any part thereof; and that the plaintiff may recover from said defendants, respectively, all damages sustained by the plaintiff in these premises.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, derricks, drills, pumps, storage vats, pipes, pipe-lines, shops, machinery, tools and appliances of every character whatsoever thereon, belonging to or in the possession of said defendants, or any of them, which have been used or now are being used in the extraction, storage, transportation, refining, sale, manufacture or in any other manner in the production of petroleum or petroleum products or other minerals from said land, or any part thereof, for the purpose of continuing, and with full power and authority to continue, the operations on said land in the production and sale of petroleum and other minerals when such course is necessary to protect the property of the complainant against injury and waste, and for the preservation, protection and use of the oil and gas in said land, and the wells, derricks, pumps, tanks, storage vats, pipes, pipe-lines, houses, shops, tools, machinery and appliances being used by the defendants, their officers, agents or assigns, in the production, transportation, manufacture or sale of pe-

troleum or other minerals from said land, or any part thereof, and that such receiver may have the usual and general powers vested in receivers of courts of chancery.

7. That the plaintiff may have such other and further relief as in equity may seem just and proper.

To the end, therefore, that this plaintiff may [115] obtain the relief to which it is justly entitled in the premises, MAY IT PLEASE YOUR HONORS to grant unto the plaintiff a writ or writs of subpoena, issued by and under the seal of this Honorable Court, directed to said defendants herein, to wit: Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, General Pipe-line Company of California, Independent Oil Producers Agency, General Petroleum Corporation, Producers Transportation Company, British-American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey, F. J. Elliott, John Barneson and William Walker therein and thereby commanding them, and each of them, at a certain time and under a certain penalty therein to be named, to be and appear before this Honorable Court and then and there, severally, full, true and direct answers make to all and singular the premises, but not under oath, answer under oath being hereby expressly waived, and stand to perform and abide by such order, direction and decree as may be made against them, or any of them, in the prem-

ises, and shall be meet and agreeable to equity.

T. W. GREGORY,

Attorney General of the United States.

ALBERT SCHOONOVER,

United States District Attorney.

E. J. JUSTICE,

Special Assistant to the Attorney General.

FRANK HALL,

Special Assistant to the Attorney General.

Special Assistant to the Attorney General. [116]

United States of America,
Northern District of California,
State of California,—ss.

George Hayworth, being first duly sworn, deposes and says:

He is now and has been since the first day of February, 1914, Chief of Field Division of the General Land Office at San Francisco, California, and prior to that time was, since July, 1910, a Special Agent of the General Land Office doing field work in California, and much of said work has been done in the investigation of facts relating to the lands withdrawn by the President as oil lands, and especially the lands withdrawn by order of September 27, 1909, and by the order of July 2, 1910.

That from examination of such lands, or the facts in relation thereto obtained by him or by Special Agents acting under his direction as such Chief of Field Division, and from examinations of the records of the General Land Office, and the local land offices of plaintiff in said State of California, he is informed

as to the matters and things as stated in the complaint with reference to the particular lands therein described; and the matters therein stated are true, except as to such matters as are alleged upon information and belief, and as to those, affiant after investigation, states he believes them to be true.

GEO. HAYWORTH.

Subscribed and sworn to before me, this 23 day of March, 1917.

[Seal] C. W. CALBREATH,
Deputy Clerk U. S. District Court, Northern District of California. [117]

Receipt of a copy of the within amended bill of complaint is hereby admitted this 8th day of May, 1917.

J. R. PRINGLE,
Attorney for Dominion Oil Co.

Due service and receipt of a copy of the within amended bill of complaint is hereby admitted this 9th day of May, 1917.

A. L. WEIL,
Attorney for General Petroleum Co., Bankline Oil Co., General Pipe-Line Co. of California, and John Barneson and Wm. Walker, and General Petroleum Corporation.

Due service and receipt of a copy of the within amended bill of complaint is hereby admitted this 10th day of May, 1917.

PILLSBURY, MADISON & SUTRO,
Attorneys for Standard Oil Co.

Receipt of a copy of the within amended bill of complaint is hereby admitted this 9th day of May, 1917.

GEO. W. LANE,

Per R. S. B.,

Attorney for Independent Oil Producers Agency.

[Endorsed]: In Equity—No. A.-58. In the District Court of the United States for the So. District of California, Northern Division. United States of America, Plaintiff, vs. Dominion Oil Company et al., Defendants. Amended Bill of Complaint. Filed May 14, 1917. Wm. M. Van Dyke, Clerk. By T. F. Green, Deputy Clerk. [118]

*In the District Court of the United States, in and for
the Southern District of California, Northern
Division*

No. A.-58—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

**Stipulation of Dominion Oil Company in Re Motion
to Strike Out, etc., Filed May 16, 1917.**

WHEREAS, subsequent to the interposing by defendant, Dominion Oil Company, of a motion to strike out and a motion to dismiss, or demurrer, to the bill of complaint filed in the above-entitled

cause, which said motion to strike out and motion to dismiss, or demurrer, have heretofore been served and filed and submitted for determination in and by the above-entitled court, plaintiff did present an amended bill of complaint, which said amended bill of complaint contains no new allegations or matters as to defendant, Dominion Oil Company.

NOW, THEREFORE, it is hereby stipulated that said motion to strike out, heretofore interposed by the Dominion Oil Company, defendant in the above-entitled action, to said original bill of complaint, together with the motion to dismiss, or demurrer to said bill heretofore interposed as aforesaid, may be, and the same hereby are, considered a motion to strike out and a motion to dismiss, or demurrer, to the amended bill of complaint heretofore served and filed by plaintiff in said cause, and which said motion to strike and motion to dismiss, or demurrer, have heretofore been submitted for decision to the above-entitled court, and have as yet been undisposed of by said court; the intention of this stipulation being that said motion to strike out and motion to dismiss, or demurrer, shall be deemed to be pleadings to said amended bill of complaint, with the same force and effect and with the same validity as if interposed [119] subsequent instead of prior to the serving and filing of said amended bill of complaint.

It is further stipulated that this stipulation need not be filed nor any order of Court made thereon.

Dated May 14, 1917.

E. J. JUSTICE,
FRANK HALL,
Solicitors for Plaintiff.
J. R. PRINGLE,

Solicitor for Defendant, Dominion Oil Company.

[Endorsed]: No. A.-58. In the District Court of the United States, in and for the Southern District of California, Northern Division. United States of America, Plaintiff, vs. Dominion Oil Company et al., Defendants. Stipulation Re Motions to Strike, etc. Filed May 16, 1917. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. J. R. Pringle, Attorney for ———, 1236 Merchants Exchange Building, San Francisco, Cal. [120]

In the District Court of the United States, in and for the Southern District of California, Northern Division, Ninth Circuit.

No. A.-58—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Answer of John Barneson and William Walker to Amended Bill of Complaint.

Come now the defendants, John Barneson and William Walker, objecting to the jurisdiction of the

above-entitled court, and not waiving such objection, answer the amended bill of complaint on file in the above-entitled action as follows:

I.

Deny that for a long time prior to, or on, or at, any time since the 27th day of September, 1909, plaintiff has been, or that it is now, the owner of, or entitled to the possession of, the Northwest Quarter of Section 15, Township 31 South, Range 22 East, Mount Diablo Base and Meridian, or any part thereof, or of any of the oil or petroleum or gas or other mineral contained in said land.

II.

Deny that on the 27th day of September, 1909, or at any time, the President of the United States, acting by, or through, the Secretary of the Interior, or under the authority, legally or otherwise, vested in him so to do, or at all, duly or regularly, or at all, withdrew, or reserved, all, or any, of the lands hereinabove described from miner exploration, or from all, or any, form of location or settlement, or selection, or filing, or entry, or patent, or occupation, or disposal, under the mineral or nonmineral land laws, or any laws of the United States, or that, since said last-named date, none [121] of said lands have been subject to exploration for mineral oil, or petroleum, or gas, or occupation, or the institution of any rights, under the public land laws of the United States; and in that behalf, allege that the said lands, being occupied by a *bona fide* claimant diligently at work, were not subject to any withdrawal.

III.

Deny that in violation of any rights whatsoever of the plaintiff, or in violation of any law, or any proclamation, the defendants, John Barneson and William Walker, or either thereof, entered upon said land subsequent to the 27th day of September, 1909, for the purpose of exploring said land for petroleum and gas, but allege in that behalf that the predecessors in interest of these defendants entered upon said land long prior to September 27th, 1909, for the purpose of exploring said land for petroleum and gas.

IV.

Admit that no one had discovered any petroleum oil on said land prior to the 27th day of September, 1909, and admit that these defendants had not acquired any interest in said land prior to said date, but allege in that behalf that the predecessors in interest of these defendants had acquired an interest in said land.

V.

Deny that oil was discovered on said land for the first time in the latter part of the year 1910, but allege that oil was discovered on said land in the month of December, 1909.

VI.

Admit that these defendants are now extracting oil and gas from said land, but deny that they are drilling any oil or gas wells thereon, or otherwise trespassing upon said land.

Admit that they assert claims to said lands and will continue to extract oil therefrom, but deny that

they will [122] drill any oil or gas wells thereon, or otherwise trespass on said land, or do any waste thereon, and deny that they will do any act to the irreparable or any injury to plaintiff, or interfere with its policy, or any policies of complainant, with respect to the use, or conservation, or disposition, of said lands, or with reference to the petroleum oil or gas contained therein.

VII.

Deny that the locations under which these defendants claim are not valid as against complainant, or that no rights have accrued to these defendants.

Deny that any claims of these defendants cast any cloud upon the alleged title of complainant, or wrongfully interfere with its operation, or disposition of said land.

Deny that complainant is without redress or adequate remedy save by this suit, or that this suit is necessary to avoid a multiplicity of actions.

VIII.

Deny that the predecessors in interest of these defendants were not *bona fide* occupants or claimants of said land in the diligent prosecution of work leading to a discovery of oil or gas on September 27th, 1909.

IX.

Admit that these defendants claim a leasehold interest in the north half of said northwest quarter of section 15 under the location notice set out in paragraph X of complainant's amended bill of complaint and others.

X.

Deny that said location notice was filed or posted for some one other than the persons whose names were used in said location notice, or that the names of said locators were used to enable the defendant, British-American Oil Company, or any other person, to acquire more than twenty acres of mineral land, in violation of the laws of the [123] United States, or at all.

Deny that said locators, and each of them, were not *bona fide* locators, or that they, or any of them, were without an interest in said location notice so filed, or that their names, or that the names of any of them, were not used to enable each, and all, of them to secure twenty acres of land, or patent therefor.

Deny that any of said persons was a mere dummy, or any dummy at all, or that the names of any of said persons were fraudulently or unlawfully used for any purpose whatsoever, and in that behalf these defendants allege that said location notice was made for the benefit of more than eight persons, and that none of the persons for whose benefit said location was made had more than a twenty acre interest therein.

XI.

Deny that these defendants have no right, title or interest in and to said lands, or in and to the petroleum deposited therein; deny that they have no right to extract the petroleum from said land or to convey or dispose of the petroleum so extracted.

Deny that any of the acts of these defendants were

in violation of any law or laws of the United States, or of any order of withdrawal, or that any act, or acts, of these defendants were in violation of the right, or any right, of the plaintiff, or that any act or acts of these defendants interfere with the execution by complainant of its public policies in respect to said land.

XII.

Deny that plaintiff is without full and complete remedy in the premises save in a court of equity.

And for a further and additional defense, these defendants allege:

I.

That this Court has no jurisdiction of the subject [124] matter of the action; that the sole question involved is the right to the possession of said land and damages for the removal of oil therefrom, and that the plaintiff has a plain, speedy and adequate remedy at law in ejectment and for mesne profits.

II.

That this Court has no jurisdiction to determine either the title or right of possession of said land, or render judgment for oil removed therefrom, for the reason that plaintiff has a plain, speedy and adequate remedy at law in ejectment, the defendant being in possession under the claim of right and claiming title to said land.

III.

That on or about the 1st day of January, 1909, said land was located by eight *bona fide* locators, each and every of them being then and there citizens of the United States; that the notice of location was posted

on said land at said time, and the boundaries marked, and copy of said location notice duly recorded in the office of the County Recorder of the county of Kern, State of California; that thereafter, the defendant, British-American Oil Company, acquired the interest of said locators in said land, and thereafter the North Half of said land was leased to the defendants, John Barneson and William Walker, and the said John Barneson and William Walker claim the said land last hereinabove described under and by virtue of the terms of said lease; that the said British-American Oil Company, and those claiming under it, was, on the 27th day of September, 1909, a *bona fide* occupant and claimant of said land, and diligently prosecuting work leading to a discovery of oil, and that said diligent prosecution of work was continued until oil was discovered thereon in paying quantities in the month of December, 1909. [125]

IV.

That the said defendants, John Barneson and William Walker acquired their leasehold interest in said land in good faith and for a valuable consideration, to wit, for the sum of \$7,000.00; that they had no knowledge, information or belief that the locators of said land were not *bona fide* locators, and that they were informed, and believed, that their predecessors in interest were diligently at work upon said land at the time of said withdrawal, and continued diligently at work until oil was discovered thereon.

V.

That more than five years prior to the commencement of the above-entitled action, these defendants,

and their predecessors in interest were in open, notorious possession of the said land and the whole thereof, and diligently at work thereon, and have held and worked said claim during said period of time, and that during said period there was no adverse claim thereto.

That five years is the period of time prescribed by the statute of limitations for mining claims in the State of California, being the State in which said land is situated.

That these defendants have never had any knowledge or notice that the complainant raised any question as to the validity of its title, and in reliance on said facts, these defendants have expended in excess of \$4,722.81 in improvements on said land.

That defendants demand a trial by jury of their rights to the possession of said land and the minerals therein contained, and that have been heretofore removed therefrom.

WHEREFORE, defendants pray that complainant take nothing by its action, and that they be hence dismissed.

A. L. WEIL,
Solicitor. [126]

[Endorsed]: No. A.-58. United States District Court, Southern District of California, Northern Division, Ninth Circuit. United States of America, Plaintiff, vs. Dominion Oil Company et al. Answer of John Barneson and William Walker. Filed Jun. 4, 1917. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. A. L. Weil, Attorney for

Defendants, 1202 Alaska Commercial Building, San Francisco, Cal.

Receipt of copy of the within answer is hereby admitted this 2d day of June, 1917.

E. J. JUSTICE,
Solicitor for Complainant. [127]

At a stated term, to wit, the January term, A. D. 1918, of the District Court of the United States of America, in and for the Southern District of California, Northern Division, held at the courtroom thereof, in the city of Los Angeles, on Wednesday, the third day of April, in the year of our Lord nineteen hundred and eighteen. Present: Honorable ROBERT S. BEAN, District Judge.

No. A.-58—EQ.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DOMINION OIL COMPANY et al.,
Defendants.

Minutes of Court—April 3, 1918—Order Setting Cause for Final Hearing, etc.

Frank Hall, Esq., and Chas. D. Hamel, Esq., Special Assistants to the Attorney General, appearing as counsel for plaintiff; A. L. Weil, Esq., appearing as counsel for the General Petroleum Company et al.; A. V. Andrews, Esq., appearing as counsel for the

Producers Transportation Company et al., J. R. Pringle, Esq., appearing as counsel for the Dominion Oil Company; on motion of counsel for plaintiff, counsel for the defendants acquiescing, IT IS ORDERED that this cause be tentatively set for final hearing before the Honorable ROBERT S. BEAN, at Los Angeles, on Monday, the 8th day of April, 1918, and all witnesses who are now present are to take notice of such setting and be present on that day.

IT IS FURTHER ORDERED, on motion of counsel for the plaintiff, counsel for the defendants consenting thereto, that all motions to strike, motion to transfer to the law side of the docket, and motion to dismiss, other than those filed by the Dominion Oil Company and disposed of on December 18, 1916, be deemed to be denied on that day, and the minutes of this court for that day and entered in this cause [128] be so amended.

IT IS FURTHER ORDERED that the defendants, Producers Transportation Company, British-American Oil Company, and the Northern Midway Oil Company, represented by Messrs. Andrews, Toland & Andrews, and the Dominion Oil Company, represented by J. R. Pringle, Esq., and the Standard Oil Company, represented by Oscar Sutro, Esq., have until and including Monday, the 8th day of April, 1918, within which time to file their answers herein. [129]

At a term of the District Court, to wit, the January term, A. D. 1918, of the District Court of the United States of America, in and for the Southern District of California, Northern Division, held at the city of Los Angeles, on Monday, the 8th day of April, in the year of our Lord one thousand nine hundred and eighteen. Present: Honorable ROBERT S. BEAN, District Judge.

No. A.-58—EQ.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Minutes of Court—April 8, 1918—Order Continuing Cause for Final Hearing.

This cause coming on this day for final hearing; Frank Hall, Esq., and Chas. D. Hamel, Esq., Special Assistants to the Attorney General, appearing as counsel for plaintiff; A. V. Andrews, Esq., appearing as counsel for Producers Transportation Company and other defendants; on motion of Frank Hall, Esq., counsel for defendants consenting thereto, IT IS ORDERED that this cause be had the same hereby is continued for final hearing to Wednesday, the 10th day of April, 1918, at the hour of 10 o'clock A. M., until which time all witnesses are excused.

[130]

At a term of the District Court, to wit, the January term, A. D. 1918, of the District Court of the United States of America, in and for the Southern District of California, Northern Division, held at the city of Los Angeles, on Wednesday, the 10th day of April, in the year of our Lord one thousand nine hundred and eighteen. Present: The Honorable ROBERT S. BEAN, District Judge.

No. A.-58—EQ.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Minutes of Court—April 10, 1918—Order Continuing Cause for Final Hearing.

This cause coming on this day for final hearing; Frank Hall, Esq., and Chas. D. Hamel, Esq., Special Assistants to the Attorney General, appearing as counsel for the plaintiff, and A. L. Weil, Esq., appearing as counsel for defendant; on motion of counsel for plaintiff, and good cause appearing, IT IS ORDERED that the order setting this cause for final hearing on this day be and the same hereby is vacated. IT IS FURTHER ORDERED that this cause be and the same hereby is reset for final hearing on Monday, the 15th day of April, 1918, at the hour of 10 o'clock A. M., at Los Angeles. [131]

At a term of the District Court, to wit, the January term, A. D. 1918, of the District Court of the United States of America, in and for the Southern District of California, Northern Division, held at the city of Los Angeles, on Monday, the 15th day of April, in the year of our Lord one thousand nine hundred and eighteen. Present: Honorable ROBERT S. BEAN, District Judge.

No. A.-58—EQ.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Minutes of Court—April 15, 1918—Order Continuing Cause for Final Hearing.

This cause coming on this day for final hearing; Frank Hall, Esq., and Chas. D. Hamel, Esq., Special Assistants to the Attorney General, appearing as counsel for plaintiff; A. V. Andrews, Esq., appearing for counsel for defendants; on motion of Frank Hall, Esq., A. V. Andrews, Esq., consenting thereto, IT IS ORDERED that the order heretofore made setting this cause for final hearing on this date be vacated; and IT IS FURTHER ORDERED that this cause be and the same hereby is set for final hearing on Wednesday, the 17th day of April, 1918.

At a term of the District Court, to wit, the January term, A. D. 1918, of the District Court of the United States of America, in and for the Southern District of California, Northern Division, held at the city of Los Angeles, on Wednesday, the 17th day of April, in the year of our Lord one thousand nine hundred and eighteen. Present: Honorable ROBERT S. BEAN, District Judge.

No. A.-58—EQ.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Minutes of Court—April 17, 1918—Order Continuing Cause for Final Hearing.

This cause coming on this day for final hearing; Frank Hall, Esq., and Chas. D. Hamel, Esq., Special Assistants to the Attorney General, appearing as counsel for plaintiff; A. L. Weil, Esq., appearing as counsel for General Petroleum Company et al., A. V. Andrews, Esq., appearing as counsel for Producers Transportation Company et al., on motion of Frank Hall, Esq., A. L. Weil, Esq., and A. V. Andrews, Esq., consenting thereto, IT IS ORDERED that this cause be and the same hereby is continued until Monday, the 22d day of April, 1918, at the hour of ten o'clock A. M. for final hearing. [133]

*In the District Court of the United States for the
Southern District of California, Northern Divi-
sion, Ninth Circuit.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Answer of Producers Transportation Company.

To the Judges of the District Court of the United States, for the Southern District of California, Sitting Within and for the Northern Division of said District:

Producers Transportation Company, a corporation, by Andrews, Toland & Andrews, Lewis W. Andrews, Thomas O. Toland and A. V. Andrews, its attorneys, for its answer to the bill of complaint herein alleges:

Producers Transportation Company disclaims any interest in the lands described in the bill of complaint herein, except only a right of way across said land for its pipe-line which is used exclusively for the transportation of oil, which right of way is derived under agreement with the occupying defendants and British-American Oil Company.

This defendant alleges that in reliance upon the undisputed possession and occupancy of said property by said defendants it, at considerable expense, has installed and maintained its pipe-line in good faith and without notice or knowledge of any of the

matters or things set forth in the bill of complaint herein.

This defendant is not a producer of oil nor a purchaser of oil and has never purchased or owned in any way any of the oil produced from said property, and the only [134] thing it has ever done connected with said oil has been to transport the same in the ordinary way. This defendant has never exercised any dominion over said oil and in transporting said oil it has acted solely as a transporter for a marketing company which had purchased said oil and was transporting the same to itself in the ordinary course of business,—all of which was well known to the plaintiff for more than five years next before the beginning of this action, and plaintiff never made any objection to the action of this defendant in that behalf, and this defendant in all things has acted in good faith as a carrier of oil and in the ordinary course of business.

WHEREFORE this defendant prays that the bill of complaint herein be dismissed as to it, and that its rights in and to its pipe-lines upon said lands be fully established and protected.

LOUIS W. ANDREWS,

T. O. TOLAND,

A. V. ANDREWS,

ANDREWS, TOLAND & ANDREWS,

Attorneys for said Defendant.

[Endorsed]: No. A.-58—Equity. In the District Court of the United States, in and for the Southern District of California, Northern Division. United States of America, Complainant, vs. Dominion Oil

Company et al., Defendants. Original Answer of Producers Transportation Company. Received copy of the within answer this 19th day of April, 1918. Frank Hall, C. D. Hamel, Attorneys for Plaintiff. Filed Apr. 10, 1918. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. Andrews, Toland & Andrews, 916-924 Union Oil Building, Los Angeles, Cal., Attorneys for said Defendant. [135]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

A.-58—EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Answer of North Midway Oil Company.

To the Judges of the District Court of the United States, for the Southern District of California, Sitting Within and for the Northern Division of said District:

The defendant North Midway Oil Company, a corporation, by Andrews, Toland & Andrews, Lewis W. Andrews, Thomas O. Toland and A. V. Andrews, its attorneys—not waiving, but, on the contrary, asserting all and all manner of objections to the jurisdiction of this Honorable Court to hear and determine

this cause,—for its answer to the bill of complaint herein admits, denies and alleges as follows:

I.

Admits that the corporate defendants referred to in the first subdivision of the bill of complaint were and are corporate defendants, as alleged.

II.

Denies that prior to or on the 27th day of September, 1909, or at any other time after said date, the plaintiff has been or now is the owner or entitled to the possession of the Northwest quarter of Section 15, Township 31 South, Range 22 East, M. D. M., or of the oil, petroleum, gas and/or of other minerals contained in said land, or of any portion of said land or of said oil. [136]

III.

Denies that on the 27th day of September, 1909, or at any other time, the President of the United States, acting by or through the Secretary of the Interior and/or under the authority legally invested in him so to do, or otherwise, duly and regularly withdrew and reserved, or withdrew or reserved at all, all or any of the land described in the second subdivision of the bill of complaint from mineral exploration and from all forms of location or settlement, selection, filing, entry, patent, occupation or disposal, under the mineral and nonmineral land laws of the United States, and denies that since said last named date none of said lands have been subject to exploration for mineral, oil, petroleum or gas, occupation or the institution of any right under the public land laws of the United States. On the contrary, this defendant

alleges that if any such pretended withdrawal was made, the same did not cover or include the lands hereinabove described, but the same were expressly excluded and reserved therefrom by reason of the fact that at the time of the said pretended withdrawal said lands had been duly and regularly located as a placer mining claim by qualified locators as allowed by law, and defendant British-American Oil Company had duly acquired the rights of said locators and of all persons in interest, and was proceeding with due diligence on and prior to September 27, 1909, with work upon said lands leading to the discovery of oil and gas therein, and that said work was thereupon and thereafter prosecuted with due diligence until said discovery was made, and the equitable title to said lands thereby perfected. And said lands were therefore and by reason of the foregoing facts never covered or intended to be covered by any such pretended withdrawal order. [137]

IV.

Denies all and singular the allegations in the fourth subdivision of the bill of complaint, and alleges that said Dominion Oil Company, said individual defendant and Bankline Oil Company each duly entered upon said land in the right of British-American Oil Company, or those holding under it, and that each of them acquired rights fully preserved by the exception and reservation in said so-called withdrawal order and by the Pickett Act and the proviso thereof approved July 25, 1910.

V.

Admits that neither of the defendants had dis-

covered petroleum oil, gas or other minerals on said land prior to September 27, 1909, but denies that neither of said defendants had acquired any rights on or with respect to said lands or any part thereof on or prior to said date, and on the contrary alleges that British-American Oil Company was the *bona fide* claimant and occupant of said land prior to and on the 27th day of September, 1909, said British-American Oil Company and those claiming under it, including this answering defendant, were *bona fide* occupants and claimants of said land and were in possession thereof and were actively engaged in the work leading to the discovery of oil and gas thereon on, from and after said 27th day of September, 1909, and never abandoned said work until oil was discovered thereon, and at all times subsequently thereto have been rightfully in possession of said property.

VI.

Denies that oil and gas were first produced from said lands in the latter part of the year 1910; alleges that oil was discovered on said property in the month of December, 1909, or January, 1910; admits that Dominion Oil Company, General Petroleum Company and Bankline Oil Company,—all as [138] lessees of this answering defendant, have since that time produced and sold oil and gas from said lands, but denies that either Standard Oil Company or Independent Oil Producers Agency or Producers Transportation Company have ever produced any oil on said land, but alleges that certain oil duly and lawfully produced upon said land with the knowledge of the plaintiff and without any objection on its part

was marketed in the regular course of business and sold to said Standard Oil Company and/or said Independent Oil Producers Agency, and that said Producers Transportation Company transported certain of said oil for said Independent Oil Producers Agency but had no interest whatever in said oil, saving and excepting as a carrier thereof for hire.

VII.

Except the fact that said Dominion Oil Company, said individual defendants and Bankline Oil Company,—as lessees of this company,—have extracted oil and gas from said lands, this defendant denies all and singular the allegations in the seventh subdivision of the bill of complaint; denies that said defendants are trespassing or threaten to trespass on said land or have committed or will commit waste, or have or will injure plaintiff.

VIII.

Admits that this answering defendant claims an interest and a right and a title in and to said land and the oil, petroleum and gas extracted therefrom and in the proceeds arising from the sale thereof, and alleges that such claim is predicated upon notice or notices of mining locations and conveyances, contracts or liens, directly or mediately from such locations, and alleges that such locations were due and regularly made in all respects in accordance with law and were and have at all times been valid and subsisting locations; denies that no rights have accrued to said defendants or either of them thereunder, either directly or mediately; denies that [139] said claims cast any cloud upon the title of the complain-

ant or wrongfully interfere with its operation and disposition of said land to the great or any injury of complainant; denies that complainant is without redress or adequate remedy save by this suit; denies that this suit is necessary to avoid a multiplicity of actions. Alleges that the location notice under which said defendants claim was valid, legal and lawful and made in good faith and that discovery has been duly made under and in pursuance thereof.

IX.

Denies that neither of the defendants nor any person or corporation from whom they have derived any interest was a *bona fide* occupant or claimant of said land on September 27, 1909, in the diligent prosecution of work leading to discovery of oil and gas thereon; on the contrary alleges that said defendant British-American Oil Company and those claiming under it were on and prior to September 27, 1909, *bona fide* occupants and claimants of said land and in the diligent prosecution of work leading to discovery of oil and gas thereon.

X.

Admits and alleges that defendants Dominion Oil Company, General Petroleum Company and Bankline Oil Company,—as lessees of this defendant,—claim said lands under a location notice duly and regularly made which purports to have been and was posted and filed and duly recorded in the names of L. W. Andrews, George C. Haldeman, Frank R. Strong, Stephen W. Dorsey, Wallace C. Dickinson, Warren F. McGrath, George W. Dickinson, and O. C. Gebauer, and known as the “Zee No. 8” Placer Min-

ing Claim, bearing date January 1, 1908.

XI.

Denies that said location notice was filed and posted by or for the sole or any benefit of British-American Oil Company, but alleges that said notice was duly and regularly made and posted for the use and benefit of an association composed of more than eight qualified locators and persons entitled [140] to locate oil and mining lands under the laws of the United States, and was made in good faith, and that none of the persons in interest for whom said location was made had or claimed to have a greater interest therein than was permitted by law. Denies that the persons who signed said location notice or any of them were mere dummies fraudulently or unlawfully used to acquire or explore more than 20 acres of mineral land for any one person in violation of the laws of the United States. On the contrary, alleges that said location made for and on behalf of an association duly and regularly constituted and was made in absolute good faith and with no purpose to violate any law of the United States and that said location could not and did not violate any such law.

XII.

Denies all and singular the allegations set forth in the twelfth subdivision of the bill of complaint, and alleges that the statements therein contained are all and singular untrue.

FIRST DEFENSE.

Further answering, and by law of first defense to the bill of complaint, North Midway Oil Company alleges:

I.

That British American Oil Company is the owner of the equitable title to the lands described in the bill of complaint, subject to the rights of defendant North Midway Oil Company, which holds the same under lease,—subject also to the rights of the lessees of North Midway Oil Company, all derived under and through said British American Oil Company, and that the title of said British American Oil Company in said property is based upon said location duly and regularly made by eight qualified persons under location notice duly posted on said property and filed on January 1, 1908, and duly [141] recorded shortly thereafter in the records of Kern County, California; that said location was made in good faith by L. W. Andrews, George C. Haldeman, Frank R. Strong, Stephen W. Dorsey, Wallace C. Dickinson, Warren F. McGrath, George W. Dickinson and O. C. Gebauer, as the “Zee No. 8” Placer Mining Claim; that each of said locators was a citizen of the United States, more than 21 years old and lawfully qualified as a locator, and said location was duly and regularly made in good faith for the personal and individual benefit of themselves and of their associates and/or principals, constituting an association of persons, each and all of whom were qualified to act as locators, and so that no one person in interest should have or own a greater interest in said location and association than was permitted by law; that at the time of the making of said location the defendant British American Oil Company had no interest whatever in said location or said property

and said location was not made for the benefit of or for the purpose that the same should be acquired for or become the property of British American Oil Company.

II.

That subsequent to the location of said "Zee No. 8" Placer Mining Claim on said northwest quarter of said section 15, as aforesaid, and on or about the month of May, 1908, in good faith and for value, British American Oil Company acquired the ownership by mesne conveyances from the locators thereof and their associates and principals, and ever since has been and now is such owner thereof; that thereupon and thereafter said British American Oil Company entered into the possession of said "Zee No. 8" claim and ever part thereof, and ever since has been and remains by itself and by and through its lessees in possession thereof continuously for about ten years last past, during all of which said time it has been, by itself and by and through its lessees, in the open, notorious, adverse and exclusive possession of said property as such mining claim as against the United States [142] and all other corporations, both public and private, and all persons whomsoever, and as against the whole world.

III.

That in the summer of 1909 said defendant British American Oil Company made arrangements looking to the immediate development of said property and caused work to be done thereon in the delivery of materials for the erection of a derrick and other structures for the immediate drilling for oil and with

the purpose and intent of immediately beginning the drilling of an oil well to discover oil upon said land; and early in September, 1909, a large quantity of said materials, lumber and other articles, were actually delivered upon said lands for the purpose of erecting a standard drilling rig upon said land and orders were placed for the balance of said materials to be immediately delivered, and an agreement was made for the construction of said derricks and structures,—all some days prior to September 27, 1909. That said materials were so delivered and said agreements were made in contemplation of a lease by this defendant to George W. Dickinson and his associates (who were stockholders of this defendant) and said lease was actually authorized and made on the 27th day of September, 1909, in good faith and for the purpose of immediate development of said property by the use of materials and under the agreements all as aforesaid made for that purpose, and said Dickinson and his associates and the corporation, to wit, this answering defendant, formed by them shortly thereafter, and their lessees, proceeded with due diligence and in good faith as rapidly as materials could be obtained and as soon as water could be had for that purpose to complete said structures and proceed with the development of said property and the discovery thereon of oil and gas. And said work was carried on with only such delays and interruptions as were necessarily incident to the existing conditions in said territory over which no one had any control, and with [143] no unreasonable delay, and with no purpose or intent to abandon said work,—until discovery was

actually made on said lands, at great expense, of oil in commercial quantities.

IV.

That on or about the last day of December, 1909, or in the fore part of January, 1910, as the result of the diligent operations of British American Oil Company and its lessees, including this defendant, petroleum oil was discovered on said "Zee No. 8" placer mining claim in commercial quantities, and that from that time forward and for six and a half years prior to the commencement of this action work in the development of said property and drilling of oil wells and production of oil therefrom has been carried forward with diligence by said British American Oil Company and those acting in its behalf and through its ownership, including this defendant, and that for more than seven years prior to the commencement of this action British American Oil Company and its lessees have been in the sole and exclusive possession and occupancy of said "Zee No. 8" Placer Mining Claim and that all said possession, occupancy and operations have been under and pursuant to claim of rights the holders and owners of said "Zee No. 8" mining claim.

That as defendant North Midway Oil Company is informed and believes and therefore alleges, from the time of the placing of the materials upon said property for the building of the rig thereon prior to the 27th day of September, 1909, and during all the time that preparations were being made for drilling on said property and the rig being built thereon, and during the time that each and all of the various oil

wells which have been drilled on said premises were being drilled, United States government and the Interior Department thereof, including the General Land Office and the Special Agents and representatives in the Field of said Department and the said [144] Land Office, and other agents and representatives of said Government have been fully advised of said facts and of the actual, open, notorious, exclusive and adverse occupancy and possession of said land by British American Oil Company and its lessees, and of the fact that such development work was in progress and of the fact that large sums of money were being and have been expended by British American Oil Company and its lessees in the drilling of oil wells upon and otherwise operating on and developing said property, all without interference or objection from any person and without let or hinderance from the Government of the United States or any of its representatives, until the filing of this action. That therein and thereby the Government of the United States was guilty of such conduct, such acquiescence and such laches as ought now in good conscience to be an estoppel and a bar to the making of any objection or interference with the right, claim or title of British American Oil Company to said premises.

SECOND DEFENSE.

For its second separate defense herein, this defendant alleges:

I.

That this Court has no jurisdiction of the subject-

matter of the action; that the sole question involved is the right of the possession of the said land and damages for the removal of oil therefrom, and that plaintiff has a plain, speedy and adequate remedy at law in ejectment and for mesne profits.

II.

That this Court has no jurisdiction to determine either the title or right of possession of said land, or render judgment for oil removed therefrom for the reason that plaintiff has a plain, speedy and adequate remedy at law in ejectment, defendants being in possession under claim of right and claiming title to said land. [145]

III.

That said defendant British-American Oil Company, and those holding under it, have been in the open, notorious and exclusive possession of the lands described in the bill of complaint herein, and the whole thereof, for more than six years next before the beginning of this action, openly, notoriously and under *bona fide* claim of ownership and right, and diligently at work thereon; that for more than five years next before the commencement of this action they have been in the possession of said lands as aforesaid, and the whole thereof, after discovery of oil had been made thereon, and at all times diligently at work thereon, and during all of said time there has been no adverse claim made by the plaintiff against the ownership and possession of said lands by said defendant British-American Oil Company or by this defendant, as its lessee.

The possession and ownership of said land by said defendant British-American Oil Company has been under and by virtue of mining location, development and discovery hereinbefore in the first defense of this answer alleged, and this defendant here adopts and makes a part of this defense each and all of the averments and allegations of said first defense.

IV.

That five years is the period of time prescribed by the statute of limitations in the State of California, being the state in which said land is situated.

That neither of the defendants has had any knowledge or notice that the plaintiff raised any question as to the validity of their title, and in reliance on said facts the defendants have expended large sums of money in improvements on said land; that by reason of the facts herein alleged plaintiff is now barred from questioning the validity of defendants' claims and title. [146]

V.

That defendants demand a trial by jury of their rights to possession of said land and minerals thereon and which have heretofore been removed therefrom.

WHEREFORE this defendant prays that plaintiff take nothing by this cause, and that it be dismissed hence.

ANDREWS, TOLAND & ANDREWS,
L. W. ANDREWS,
THOS. O. TOLAND,
A. V. ANDREWS,

By A.

Attorneys for said Answering Defendants.

[Endorsed]: No. A.-58—Equity. In the District Court of the United States, in and for the Southern District of California, Northern Division, Ninth Circuit. United States of America, Complainant, vs. Dominion Oil Company et al., Defendants. Answer of North Midway Oil Company. Original. Received copy of the within ——— this 19th day of April, 1918. Frank Hall, C. D. Hamel, Attorneys for Plaintiff. Filed Apr. 19, 1919. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. Andrews, Toland & Andrews, 916-924 Union Oil Building, Los Angeles, Cal., Attorneys for answering deft. North Midway Oil Co. [147]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

A.-58—EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Answer of British American Oil Company.

To the Judges of the District Court of the United States, for the Southern District of California, Sitting Within and for the Northern Division of said District:

The British American Oil Company, a corpora-

tion, by Andrews, Toland & Andrews, Lewis W. Andrews, Thomas O. Toland and A. V. Andrews, its attorneys,—not waiving, but on the contrary asserting all and all manner of objections to the jurisdiction of this Honorable Court to hear and determine this cause,—for its answer to the bill of complaint herein admits, denies and alleges as follows:

I.

Admits that the corporate defendants referred to in the first subdivision of the bill of complaint were and are corporate defendants, as alleged.

II.

Denies that prior to or on the 27th day of September, 1909, or at any other time after said date, the plaintiff has been or now is the owner or entitled to the possession of the Northwest quarter of Section 15, Township 31 South, Range 22 East, M. D. M., or of the oil, petroleum, gas and or of other minerals contained in said land, or of any portion of said land or of said oil. [148]

III.

Denies that on the 27th day of September, 1909, or at any other time, the President of the United States, acting by or through the Secretary of the Interior and or under the authority legally invested in him so to do, or otherwise, duly and regularly withdrew and reserved, or withdrew or reserved at all, all or any of the land described in the second subdivision of the bill of complaint from mineral exploration and from all forms of location or settlement, selection, filing, entry, patent, occupation or disposal, under the mineral and nonmineral land laws of the

United States, and denies that since some last-named date none of said lands have been subject to exploration for mineral, oil, petroleum or gas, occupation or the institution of any right under the public land laws of the United States. On the contrary, this defendant alleges that if any such pretended withdrawal was made, the same did not cover or include the lands hereinabove described, but the same were expressly excluded and reserved therefrom by reason of the fact that at the time of the said pretended withdrawal said lands had been duly and regularly located as a placer mining claim by qualified locators as allowed by law, and this defendant had duly acquired the rights of said locators and of all persons in interest, and was proceeding with due diligence on and prior to September 27, 1909, with work upon said lands leading to the discovery of oil and gas therein, and that said work was thereupon and thereafter prosecuted with due diligence until said discovery was made, and the equitable title to said lands thereby perfected. And said lands were therefore and by reason of the foregoing facts never covered or intended to be covered by any such pretended withdrawal order.

IV.

Denies all and singular the allegations in the fourth [149] subdivision of the bill of complaint, and alleges that said North Midway Oil Company, Dominion Oil Company, John Barneson and William Walker and Bankline Oil Company each duly entered upon said land in the right of this defendant, or those holding under it, and that each of them ac-

quired rights fully preserved by the exception and reservation in said so-called withdrawal order and by the Pickett Act and the proviso thereof approved July 25, 1910.

V.

Admits that neither of the defendants had discovered petroleum oil, gas or other minerals on said lands, prior to September 27, 1909, but denies that neither of said defendants had acquired any rights on or with respect to said lands or any part thereof on or prior to said date, and on the contrary alleges as hereinbefore set forth that this defendant and those claiming under it were in the *bona fide* occupation of said land prior to and on the 27th day of September, 1909, and were actively engaged in work leading to the discovery of oil and gas thereon on said 27th day of September, 1909, and never abandoned said work until discovery was duly made.

VI.

Denies that oil and gas were first produced from said lands in the latter part of the year 1910; alleges that oil was discovered on said property in the month of December, 1909, or January, 1910; admits that Dominion Oil Company, General Petroleum Company and Bankline Oil Company have since that time produced and sold oil and gas from said lands, but denies that either Standard Oil Company or Independent Oil Producers Agency or Producers Transportation Company have ever produced any oil on said land, but alleges that certain oil duly and lawfully produced upon said land with the knowledge of the plaintiff and without any objection on its part

was marketed in the regular course of business and sold to said Standard Oil Company and or said Independent Oil Producers [150] Agency, and that said Producers Transportation Company transported certain of said oil for said Independent Oil Producers Agency but had no interest whatever in said oil saving and excepting as a carrier thereof for hire.

VII.

Except the fact that said Dominion Oil Company said individual defendants and Bankline Oil Company have extracted oil and gas from said lands, this defendant denies all and singular the allegations in the seventh subdivision of the bill of complaint; denies that said defendants are trespassing or threaten to trespass on said land or have committed or will commit waste, or have or will injure plaintiff.

VIII.

Admits that each of the defendants excepting Standard Oil Company, Independent Oil Producers Agency, Producers Transportation Company, Susan Elliott, A. B. Perkey and F. J. Elliott claim an interest and some right and title in and to said land and the oil, petroleum and gas extracted therefrom and in the proceeds arising from the sale thereof, and that each of said claims is predicted upon notice or notices of mining locations and conveyances, contracts and liens from such locations. Denies that none of such location notices and claims are valid against complainant; denies that no rights have accrued to said defendants or either of them thereunder either directly or mediately; denies that said claims cast any cloud upon the title of the complain-

ant or wrongfully interfere with its operation and disposition of said land to the great or any injury of complainant; denies that complainant is without redress or adequate remedy save by this suit; denies that this suit is necessary to avoid a multiplicity of actions. Alleges that the location notice under which said defendants claim was valid, legal and [151] lawful and made in good faith and that discovery has been duly made under and in pursuance thereof.

IX.

Denies that neither of the defendants nor any person or corporation from whom they have derived any interest was a *bona fide* occupant or claimant of said land on September 27, 1909, in the diligent prosecution of work leading to discovery of oil and gas thereon; on the contrary, alleges that this defendant and those claiming under it were on and prior to September 27, 1909, *bona fide* occupants and claimants of said land and in the diligent prosecution of work leading to discovery of oil and gas thereon.

X.

Admits and alleges that defendants Dominion Oil Company, John Barneson and William Walker and Bankline Oil Company claim said lands under a location notice duly and regularly made which purports to have been and was posted and filed and duly recorded in the names of L. W. Andrews, George C. Haldeman, Frank R. Strong, Stephen W. Dorsey, Wallace C. Dickinson, Warren F. McGrath, George W. Dickinson and O. C. Gebauer, and known as the "Zee No. 8" Placer Mining Claim, bearing date January 1, 1908.

XI.

Denies that said location notice was filed and posted by or for the sole or any benefit of this defendant, but alleges that said notice was duly and regularly made and posted for the use and benefit of an association composed of more than eight qualified locators and persons entitled to locate oil and mining lands under the laws of the United States, and was made in good faith, and that none of the persons in interest and for whom said location was made had or claimed to have a greater interest therein than was permitted by law. Denies that the persons who signed said [152] location notice or any of them were mere dummies fraudulently or unlawfully used to acquire or explore more than 20 acres of mineral land for any one person in violation of the laws of the United States. On the contrary, alleges that said location was made for and on behalf of an association duly and regularly constituted and was made in absolute good faith and with no purpose to violate any law of the United States and that said location could not and did not violate any such law.

XII.

Denies all and singular the allegations set forth in the twelfth subdivision of the bill of complaint, and alleges that the statements therein contained are all and singular untrue.

Denies that none of the defendants has or ever had any right, title or interest in or to or any lien upon said land or any part thereof, and alleges that this answering defendant has the right and title and

interest in said land as in this answer particularly set forth, and in every part thereof, and has like right, title and interest in and to the petroleum, mineral oil and gas deposited therein, and has the right to extract the petroleum and the mineral oil and the gas from said land and to convey and dispose thereof as it sees fit, and denies that any act of this defendant or of any party claiming under it in entering upon said land, in drilling oil wells thereon, and extracting petroleum and gas therefrom were or that either of said acts was in violation of any law of the United States or in violation of any valid withdrawal order or any valid order reserving said land, and denies that there were any such orders, and denies that any acts of this defendant or any claiming under it were in violation of any of the rights of plaintiff or in interference with the execution of any public policies. [153]

FIRST DEFENSE.

Further answering, and by way of first defense to the bill of complaint, British-American Oil Company alleges:

I.

That it is the owner of the equitable title to the lands described in the bill of complaint, subject to rights of defendants North Midway Oil Company, Dominion Oil Company, General Petroleum Company and Bankline Oil Company, derived under and through it, and that its title and interest in said property is based upon said location duly and regularly made by eight qualified persons under location notice duly posted on said property and filed on Janu-

ary 1, 1908, and duly recorded shortly after said date in the records of Kern County, California; that said location was made in good faith by L. W. Andrews, George C. Haldeman, Frank R. Strong, Stephen W. Dorsey, Wallace C. Dickinson, Warren F. McGrath, George W. Dickinson and O. C. Gebauer, as the "Zee No. 8" Placer Mining Claim; that each of said locators was a citizen of the United States, more than 21 years old and lawfully qualified as a locator, and said location was duly and regularly made in good faith for the personal and individual benefit of themselves and of their associates and or principals, constituting an association of persons, each and all of whom were qualified to act as locators, and so that no one person in interest should have or own a greater interest in said location and association than was permitted by law; that at the time of the making of said location this answering defendant had no interest whatever in said location or said property and said location was not made for the benefit of or for the purpose that the same should be acquired for or become the property of British-American Oil Company.

II.

That subsequent to the location of said "Zee No. 8" [154] Placer Mining Claim on said northwest quarter of said section 15, as aforesaid, and on or about the month of May, 1908, in good faith and for value British-American Oil Company acquired the ownership by mesne conveyances from the locators thereof and their associates and principals, and ever since has been and now is such owner thereof; that

thereupon and thereafter said British-American Oil Company entered into the possession of said "Zee No. 8" claim and every part thereof, and ever since has been and remains by itself and by and through its lessees in possession thereof continuously for about ten years last past, during all of which said time it has been, by itself and by and through its lessees, in the open, notorious, adverse and exclusive possession of said property as such mining claim as against the United States and all other corporations, both public and private, and all persons whomsoever, and as against the whole world.

III.

That in the summer of 1909 this defendant made arrangements looking to the immediate development of said property and caused work to be done thereon in the delivery of materials for the erection of a derrick and other structures for the immediate drilling for oil and with the purpose and intent of immediately beginning the drilling of an oil well to discover oil upon said land; and early in September, 1909, a large quantity of said materials, lumber and other articles, were actually delivered upon said lands for the purpose of erecting a standard drilling rig upon said land and orders were placed for the balance of said materials to be immediately delivered, and an agreement was made for the construction of said derrick and structures,—all some days prior to September 27, 1909.

That said materials were so delivered and said agreements were made in contemplation of a lease by this [155] defendant to George W. Dickinson

and his associates (who were stockholders of this defendant) and said lease was actually authorized and made on the 27th day of September, 1909, in good faith and for the purpose of immediate development of said property by the use of the materials and under the agreements all as aforesaid made for that purpose, and said Dickinson and his associates and the corporation formed by them shortly thereafter, and their lessees, proceeded with due diligence and in good faith as rapidly as materials could be obtained and as soon as water could be had for that purpose to complete said structures and proceed with the development of said property and the discovery thereon of oil and gas. And said work was carried on with only such delays and interruptions as were necessarily incident to the existing conditions in said territory over which no one had any control, and with no unreasonable delay, and with no purpose or intent to abandon said work,—until discovery was actually made on said lands, at great expense, of oil in commercial quantities.

IV.

That on or about the last of December, 1909, or in the fore part of January, 1910, as the result of the diligent operations of this defendant and its lessees, petroleum oil was discovered on said "Zee No. 8" placer mining claim in commercial quantities, and that from that time forward and for six and half years prior to the commencement of this action work in the development of said property and drilling of oil wells and production of oil therefrom has been carried forward with diligence by this defendant and

those acting in its behalf and through its ownership, and that for more than seven years prior to the commencement of this action British-American Oil Company and its lessees have been in the sole and exclusive possession and occupancy of said [156] "Zee No. 8" Placer Mining Claim and that all said possession, occupancy and operations have been under and pursuant to claim of right as the holders and owners of said "Zee No. 8" mining claim.

That as defendant British-American Oil Company is informed and believes and therefore alleges, from the time of the placing of the materials upon said property for the building of the rig thereon prior to the 27th day of September, 1909, and during all the time that preparations were being made for drilling on said property and the rig being built thereon, and during the time that each and all of the various oil wells which have been drilled on said premises were being drilled, United States government and the Interior Department thereof, including the General Land Office and the special agents and representatives in the field of said department and the said Land Office and other agents and representatives of said Government have been fully advised of said facts and of the actual open, notorious, exclusive and adverse occupancy and possession of said land by British-American Oil Company and its lessees, and of the fact that such development work was in progress and of the fact that large sums of money were being and have been expended by this defendant and its lessees in the drilling of oil wells upon and otherwise operating on and developing said

property, all without interference or objection from any person and without let or hindrance from the Government of the United States or any of its representatives, until the filing of this action. That therein and thereby the Government of the United States was guilty of such conduct, such acquiescence and such laches as ought now in good conscience to be an estoppel and a bar to the making of any objection or interference whatever with the right, claim or title of British-American Oil Company to said premises. [157]

SECOND DEFENSE.

For its second separate defense herein, this defendant alleges:

I.

That this Court has no jurisdiction of the subject matter of the action; that the sole question involved is the right of the possession of the said land and damages for the removal of oil therefrom, and that plaintiff has a plain, speedy and adequate remedy at law in ejectment and for mesne profits.

II.

That this Court has no jurisdiction to determine either the title or right of possession of said land, or render judgment for oil removed therefrom for the reason that plaintiff has a plain, speedy and adequate remedy at law in ejectment, defendants being in possession under claim of right and claiming title to said land.

III.

That this defendant, British American Oil Company, and those holding under it, have been in the

open, notorious and exclusive possession of the lands described in the bill of complaint herein, and the whole thereof, for more than six years next before the beginning of this action, openly, notoriously and under *bona fide* claim of ownership and right, and diligently at work thereon; that for more than five years next before the commencement of this action they have been in the possession of said lands as aforesaid, and the whole thereof, after discovery of oil had been made thereon, and at all times diligently at work thereon, and during all of said time there has been no adverse claim made by the plaintiff against the ownership and possession of said lands by this defendant or by those claiming under it.

The possession and ownership of said land by this defendant has been under and by virtue of mining location, [158] development and discovery hereinbefore in the first defense of this answer alleged, and this defendant here adopts and makes a part of this defense each and all of the averments and allegations of said first defense.

IV.

That five years is the period of time prescribed by the statute of limitations in the State of California, being the state in which said land is situated.

That neither of the defendants has had any knowledge or notice that the plaintiff raised any question as to the validity of their title, and in reliance on said facts the defendants have expended large sums of money in improvements on said land; that by reason of the facts herein alleged plaintiff is now barred

from questioning the validity of defendants' claims and title.

V.

That defendants demand a trial by jury of their rights to possession of said land and minerals thereon and which have heretofore been removed therefrom.

THIRD DEFENSE.

This defendant adopts, and by reference makes a part hereof, each and all of the averments and allegations of the first and second defenses in this answer alleged, and further alleges:

That the plaintiff has had full knowledge ever since the year 1909 that this defendant and those claiming under it have been in the actual possession and occupation of the lands described in the bill of complaint, and have been expending thereon large sums of money in prospecting said lands for the discovery of oil thereon, and in developing oil after the same was discovered; and plaintiff has had actual knowledge and notice that this defendant, and those claiming under it, and in its right, have made said expenditures upon said land when prior to said expenditures and explorations. [159] said lands were substantially of no value, and that by and by reason of the said explorations and expenditures all the value which said lands now possess has been created. Nevertheless plaintiff has stood by with full knowledge and notice of all of the facts and conditions from the year 1909 until the beginning of this action and by its silence and failure to object or take any proceedings has encouraged the development and production of oil by this defendant and those

claiming under it upon said lands, and has caused and induced very large expenditures in that behalf, and if it were now permitted to assert its pretended rights a fraud would be perpetrated upon this defendant and those claiming in its right.

By reason of the premises the plaintiff is and should be estopped now to assert its pretended rights in said land as in the bill of complaint herein attempted to be done.

WHEREFORE this defendant prays that the bill of complaint be dismissed.

ANDREWS, TOLAND & ANDREWS,

L. W. ANDREWS,

A. V. ANDREWS,

By A.,

THOS. O. TOLAND,

By A.,

Attorneys for said Answering Defendant.

[Endorsed]: No. A.-58—Equity. In the District Court of the United States, in and for the Southern District of California, Northern Division. United States of America, Complainant, vs. Dominion Oil Co. et al., Defendants. Original Answer of British American Oil Company. Received copy of the within answer this 19th day of April, 1918. Frank Hall, C. D. Hamel, Attorneys for Complainant. Filed Apr. 19, 1918. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. Andrews, Toland & Andrews, 916-924 Union Oil Building, Los Angeles, Cal., Attorneys for Answering Deft. [160]

At a term of the District Court, to wit, the January term, A. D. 1918, of the District Court of the United States of America, in and for the Southern District of California, Northern Division, held at the city of Los Angeles, on Monday, the 22d day of April, in the year of our Lord one thousand nine hundred and eighteen. Present: Honorable ROBERT S. BEAN, District Judge.

No. A.-58—EQ.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Minutes of Court—April 22, 1918—Hearing.

This cause coming on this day for final hearing; Frank Hall, Esq., Special Assistant to the Attorney General, and Chas. D. Hamel, Special Assistant to the United States Attorney, appearing as counsel for plaintiff; J. R. Pringle, Esq., appearing as counsel for defendant, Dominion Oil Company; A. L. Weil, Esq., appearing as counsel for defendants, General Petroleum Company, General Pipe-Line Company, Bankline Oil Company, John Barneson and Wm. Walker; L. W. Andrews, Esq., T. O. Toland, Esq., and A. V. Andrews, Esq., appearing as counsel for Producers Transportation Company et al.; A. S. Custer, an official court reporter of the testimony and proceedings being present and acting as such;

and statement on behalf of plaintiff having been made by Frank Hall, Esq.; on motion of Frank Hall, Esq., IT IS ORDERED that this cause be and the same hereby is dismissed, without prejudice, as to defendant, Producers Transportation Company; and the plaintiff having offered certain exhibits which are admitted in evidence, ordered filed and are as follows, to wit: [161]

Plaintiff's Ex. 1, certified copy of withdrawal order of September 27, 1909;

Plaintiff's Ex. 2, plat of NW. 1/4 of Sec. 15, T. 31 S., R. 22 E;

Plaintiff's Ex. 3, certified copy of location notice, Zee No. 8;

Plaintiff's Ex. 4, certified copy deed March 4, 1908, B. Adams et al. to Frank R. Strong and M. Z. Elliott;

Plaintiff's Ex. 5, certified copy of deed, dated May 4, 1909, Frank R. Strong and M. Z. Elliott to British-American Oil Company;

Plaintiff's Ex. 6, certified copy lease September 27, 1909, British-American Oil Company to Geo. W. Dickinson, and assignment to No. Midway Oil Company;

Plaintiff's Ex. 7, certified copy resolution adopting, and lease November 20, 1909, North Midway Oil Company to Joseph McDonnell, and assignment; and

Roy Jones, a witness on behalf of the plaintiff, having been called, duly sworn and having testified; and

Wm. G. Van Slyke, a witness on behalf of plaintiff, having been called, duly sworn and having given his testimony; and now, at the hour of 12:10 o'clock P. M., court having taken a recess until 2 o'clock P. M., now, at the hour of 2 o'clock P. M., court having reconvened, and counsel and shorthand reporter being present as before;

On motion of Frank Hall, Esq., IT IS ORDERED that the shorthand reporters be and they hereby are allowed to withdraw exhibits from the files, for the purpose of copying same into the record; and

C. F. Henry, F. B. Sowers, F. F. Best and R. L. Davis, witnesses on behalf of plaintiff, having been called, duly sworn and having testified for plaintiff; now, at the hour of 3 o'clock P. M., IT IS ORDERED that this cause be [162] and the same hereby is continued until Tuesday, the 23d day of April, 1918, at the hour of 10 o'clock A. M. for further hearing. [163]

*In the United States District Court, in and for the
Southern District of California, Northern Division.*

IN EQUITY—No. A.-58.

UNITED STATES OF AMERICA,

Complainant,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Answer of Dominion Oil Company.

Now comes the defendant, Dominion Oil Company, and objecting to the jurisdiction of the above-entitled court, and without waiver of such objection, makes answer to the amended bill of complaint on file in the above cause, averring and denying as follows:

I.

Denies that for a long time prior to, or on, or at, or at any time since the 27th day of September, 1909, complainant has been, or now is, the owner of, or entitled to the possession of that certain land, to wit, the northwest quarter of section fifteen, Township thirty-one South, Range twenty-two East, Mt. Diablo Base and Meridian, or any part of said Northwest quarter, or of any of the oil or petroleum or gas or other mineral contained in said Northwest quarter.

II.

Denies that on said September 27th, or at any time, the President of the United States, acting by or through the Secretary of the Interior, or under the authority legally or otherwise vested in him so to do, or at all, duly or regularly or at all withdrew or reserved all of any of the lands hereinabove described from mineral exploration, or from all or [164] any form of location or settlement or selection, or filing, or entry, or patent, or occupation, or disposal under the mineral or nonmineral laws, or under any laws of the United States, or that since the said last-named date none of said lands have been subject to exploration for mineral oil, or petroleum, or gas, or

occupation, or the institution of any rights under the public land laws of the United States; and in this behalf the above-named defendant alleges that said lands, being occupied by a *bona fide* claimant, diligently at work, were not subject to any withdrawal.

II.

Denies that in violation of any rights whatsoever of the complainant, or in violation of any law or any proclamation of the President of the United States, said defendant Dominion Oil Company entered upon said land subsequent to the said 27th day of September for the purpose of exploring said land for petroleum or gas, but alleges in this behalf that the predecessors in interest of said defendant entered upon said land long prior to said September 27th for the purpose of exploring said land for petroleum and gas, or petroleum or gas.

IV.

Admits that no one had discovered any petroleum oil on said land prior to said September 27th, and admits that this defendant had not acquired any interest in said land prior to said date, but alleges in that behalf that the predecessors in interest of said defendant had acquired an interest in said land prior to said September 27th.

V.

Denies that oil was produced on said land for the first time in the latter part of the year 1910, and in this behalf this defendant alleges that oil was discovered on said land in the month of September, 1909.

VI.

Admits that this defendant is now extracting oil and gas [165] from said land but denies that it is drilling any oil or gas wells thereon, or otherwise trespassing upon said land. Admits that it asserts claim to said land and will continue to extract oil therefrom, but denies that it will drill any oil or gas wells thereon or otherwise trespass on said land, or do any waste thereon, and denies that it will do any act to the irreparable injury, or any injury, of complainant, or interfere with complainant's policy, or any of its policies with respect to the use, conservation or disposition of said land, or with reference to the petroleum oil or gas contained therein.

VII.

Denies that the locations under which this defendant claims are not valid as against complainant, or that no rights have accrued to this defendant. Denies that any claim of this defendant casts any cloud upon the alleged title of complainant or wrongfully interferes with its operation or disposition of said land. Denies that complainant is without redress or adequate remedy save by this suit, or that this suit is necessary to avoid a multiplicity of actions.

VIII.

Denies that the predecessors in interest of this defendant were not *bona fide* occupants or claimants of said land in the diligent prosecution of work leading to a discovery of oil or gas on said September 27th.

IX.

Admits that this defendant claims a leasehold in-

terest in the South half of the South half of said Northwest quarter of Section fifteen under the location notice set out in paragraph X of complainant's amended bill of complaint.

X.

Denies that said location notice was filed or posted for [166] some one other than the persons whose names were used in said location notice, or that the names of said locators were used to enable the defendant, British-American Oil Company, or any other person, to acquire more than twenty acres of mineral land in violation of the laws of the United States or otherwise or at all. Denies that said locators, or each of them, or any of them, were not *bona fide* locators, or that they or any of them were without an interest in said location notice so filed, or that their names, or that the names of any of them, were not used to enable each or all of them to secure only twenty acres of land or patent therefor. Denies that any of said persons was a mere dummy, or any dummy at all, or that the names of any of said persons were fraudulently or unlawfully used for any purpose whatsoever, and in this behalf this defendant alleges that said location notice was made for the benefit of more than eight persons and that none of the persons for whose benefit said location was made had more than a twenty acre interest therein.

XI.

Denies that this defendant has no right, title or interest in or to said lands or in or to the petroleum deposit therein. Denies that it has no right to ex-

tract the petroleum from said land or to convey or dispose of the petroleum so extracted. Denies that any of the acts of this defendant were in violation of any law or laws of the United States or otherwise or at all, or of any order of withdrawal, or that any act or acts of this defendant was or were in violation of the right of complainant or that any act or acts of this defendant interfere with the execution by complainant of its public policy in respect to said land. [167]

XII.

Denies that complainant is without full and complete remedy in the premises save in a suit in equity.

For a further and additional defense this defendant alleges:

I.

That this Court has no jurisdiction of the subject-matter of the action and that the sole question involved is the right to the possession of the land hereinabove described and damages for the removal of oil therefrom, and that the complainant has a plain, speedy and adequate remedy at law in ejectment and for mesne profits.

II.

That this Court has no jurisdiction to determine either the right or title or possession of said land or to render judgment for oil removed therefrom for the reason that complainant has a plain, speedy and adequate remedy at law in ejectment, the defendant being in possession under claim of right and claim of title to said land.

III.

That on or about the 1st day of January, 1908, said land was located by eight *bona fide* locators, each and every one of them being then and there citizens of the United States; that notice of location was posted on said land at said time and the boundaries marked and a copy of said location duly recorded in the office of the County Recorder of the county of Kern, State of California; that thereafter the defendant, British-American Oil Company, acquired the interest of said locators in said land and thereafter the South half of the South half was by mesne conveyances leased to this defendant, and this defendant claims the said last hereinabove described land under and by virtue of the terms of said leases; that [168] said British American Oil Company and those claiming under it were on said September 27, 1909, *bona fide* occupants and claimants of said land, diligently prosecuting work leading to a discovery of oil, and that said diligence and prosecution of work has continued until oil was discovered thereon in paying quantities in the month of December, 1909.

IV.

That this defendant acquired its leasehold interest in said land in good faith and for a valuable consideration and that it had no knowledge, information or belief that the locators of said land were not *bona fide* locators, and that it was informed and believed that its predecessors in interest were diligently at work upon said land at the time of said withdrawal

and continued diligently at work until oil was discovered thereon.

V.

That for more than five years prior to the commencement of the above-entitled action this defendant and its predecessors in interest were in open and notorious possession of said land and of the whole thereof and diligently at work thereon, and have held and worked said land during said period of time, and that during said period of time there was no adverse claim thereto. That five years is the period of time prescribed by the statute of limitations for mining claims in the State of California, said State being the State in which said land is situated. That this defendant never had any knowledge or notice that complainant raised any question as to the validity of its title and in reliance on said facts this defendant has expended in excess of ten thousand dollars in improvements on said land. That this defendant demands a trial by jury of its right to the possession of said land and the mineral thereon contained and that may have been removed therefrom. [169]

WHEREFORE, defendant Dominion Oil Company prays that complainant take nothing by its action and that it be hence dismissed with its costs.

J. R. PRINGLE,

Solicitor for Defendant, Dominion Oil Company.

State of California,

City and County of San Francisco,—ss.

A. J. Ranken, being duly sworn, says: That he is

an officer, to wit, Secretary, of Dominion Oil Company, a corporation, one of the defendants in the above-entitled action; that he has read the foregoing answer to amended complaint and knows the contents thereof and that the same is true of his own knowledge except as to the matters which are therein stated on information or belief, and that as to such matters he believes it to be true.

A. J. RANKEN.

Subscribed and sworn to before me this 8th day of April, 1918.

[Seal]

M. V. COLLINS,

Notary Public in and for the City and County of San Francisco, State of California.

Service of the within by receipt of a copy thereof is admitted this — day of April, 1918.

HENRY F. MAY,

FRANK HALL,

Attorneys for Complainant. [170]

[Endorsed]: No. A.-58—In Equity. In the United States District Court, in and for the Southern District of California, Northern Division. United States of America, Complainant, vs. Dominion Oil Company et al., Defendants. Answer of Dominion Oil Company. Filed April 23d, 1918. Chas. N. Williams, Clerk. J. R. Pringle, Attorney for Dominion Oil Co. 1236 Merchants Exchange Building, San Francisco, Cal. [171]

At a term of the District Court, to wit, the January term, A. D. 1918, of the District Court of the United States of America, in and for the Southern District of California, Northern Division, held at the City of Los Angeles, on Tuesday, the 23d day of April, in the year of our Lord, one thousand nine hundred and eighteen. Present: Honorable ROBERT S. BEAN, District Judge.

No. A.-58—EQ.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

**Minutes of Court—April 23, 1918 — Hearing
(Continued).**

This cause coming on this day for further final hearing; Frank Hall, Esq., Special Assistant to the Attorney General, and Chas. D. Hamel, Esq., Special Assistant to the United States Attorney, appearing as counsel for plaintiff; J. R. Pringle, Esq., appearing as counsel for defendant, Dominion Oil Company; A. L. Weil, Esq., appearing as counsel for defendants, General Petroleum Company et al.; L. W. Andrews, Esq., T. A. Toland, Esq., and A. V. Andrews, Esq., appearing as counsel for Producers Transportation Company et al.; A. S. Custer, a shorthand reporter of the testimony and proceedings, being present and acting as such; and the Court

having ordered that the hearing be proceeded with; and

Olive C. De Bauers, and Albert G. Shaw, witnesses on behalf of the plaintiff, having been called, duly sworn and having testified; and

Roy Jones, a witness on behalf of plaintiffs, having [172] been recalled and further testified for plaintiff; and now, at the hour of 12:08 o'clock P. M. Court having taken a recess until 2 o'clock P. M. of this day; and now, at the hour of 2 o'clock P. M. Court having reconvened, and counsel and shorthand reporter being present as before, and

Henry L. Musser, Gustavus A. Horn, and George C. Haldeman, witnesses on behalf of plaintiff, having been called, duly sworn and having testified; and

Roy Jones, a witness on behalf of plaintiff, having been recalled and having further testified for plaintiff; and

George W. Dickinson, a witness on behalf of plaintiff, having been called, duly sworn and having testified for plaintiff; and

A. H. Butler, Jr., having been called and sworn by the Court and having testified; and

L. W. Andrews, Esq., having been called, duly sworn and having testified on behalf of plaintiff;

It is now, at the hour of 3:54 o'clock P. M., ORDERED BY THE COURT that this matter be and the same hereby is continued until Wednesday, the 24th day of April, 1918, at the hour of ten o'clock A. M., for further final hearing. [173]

At a term of the District Court, to wit, the January term, A. D. 1918, of the District Court of the United States of America, in and for the Southern District of California, Northern Division, held at the city of Los Angeles, on Wednesday, the 24th day of April, in the year of our Lord one thousand nine hundred and eighteen. Present: Honorable ROBERT S. BEAN, District Judge.

No. A.-58—EQ.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

**Minutes of Court—April 24, 1918—Hearing
(Continued).**

This cause coming on this day for further final hearing; Frank Hall, Esq., Special Assistant to the Attorney General, and Chas. D. Hamel, Esq., Special Assistant to the United States Attorney, appearing as counsel for plaintiff; J. R. Pringle, Esq., appearing as counsel for defendant, Dominion Oil Company; A. L. Weil, Esq., appearing as counsel for defendant, General Petroleum Company, et al.; L. W. Andrews, Esq., T. O. Toland, Esq., and A. V. Andrews, Esq., appearing as counsel for Producers Transportation Company, et al.; W. C. Wren, a shorthand reporter of the testimony and proceed-

ings, being present and acting as such; and the Court having ordered that the hearing proceed; and

Helen R. Hopper, Addison C. Makin, Dudley P. Casey, Warren F. McGrath, James E. McDonald, and Frank R. Strong, [174] having been called, duly sworn and having respectively testified on behalf of the plaintiff; now, at the hour of 11:53 o'clock A. M., Court having taken a recess until 2 o'clock P. M. of this day; and now, at the hour of 2 o'clock P. M., Court having reconvened, and counsel and shorthand reporter being present as before; and

A. W. Casey, a witness on behalf of the plaintiff, having been called, duly sworn and having testified; and

Roy Jones, a witness for the plaintiff, having been recalled and having further testified for the plaintiff; and in connection with the testimony of said witness, the plaintiff having offered certain exhibits in evidence, which were admitted, ordered filed, and are as follows, to wit:

Plaintiff's Ex. 7, being certificate of diminution;

Plaintiff's Ex. 8, being list of locators; with some reservations; thereupon the Government rests; and statement having been made on behalf of the defendants by A. L. Weil, Esq., and now, at the hour of 3:22 o'clock P. M., Court having taken a recess of 7 minutes; and now, at the hour of 3:29 o'clock P. M., Court having reconvened, and counsel and shorthand reporter being present as before; and

E. W. King, a witness on behalf of defendants, having been called, duly sworn and having testified

for the defendants; and defendants having offered certain exhibits, which are admitted in evidence, ordered filed, and are as follows, to wit:

Defendants' Ex. "A," being bill for lumber;

Defendants' Ex. "B," being bill for lumber; and

[175]

A. H. Butler, Jr., heretofore duly sworn, having been recalled and having testified for defendants, and in connection with the testimony of said witnesses, the following exhibits having been offered in evidence, admitted and ordered filed, to wit:

Defendants' Ex. "C," being bill for teaming;

Defendants' Ex. "D," being bill for teaming; and now, at the hour of 4:25 o'clock P. M., the COURT ORDERS that this cause be and the same hereby is continued until Thursday, the 25th day of April, 1918, at the hour of ten o'clock A. M., for further hearing. [176]

At a term of the District Court, to wit, the January term, A. D. 1918, of the District Court of the United States of America, in and for the Southern District of California, Northern Division, held at the city of Los Angeles, on Thursday, the 25th day of April, in the year of our Lord one thousand nine hundred and eighteen. Present: Honorable ROBERT S. BEAN, District Judge.

No. A.-58—EQ.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

**Minutes of Court—April 25, 1918—Hearing
(Continued).**

This cause coming on this day for further proceedings on final hearing; Frank Hall, Esq., Special Assistant to the Attorney General, and Chas. D. Hamel, Esq., Special Assistant to the United States Attorney, appearing as counsel for plaintiff; J. R. Pringle, Esq., appearing as counsel for defendant, Dominion Oil Company; A. L. Weil, Esq., appearing as counsel for General Petroleum Company et al.; and L. W. Andrews, Esq., T. O. Toland, Esq., and A. V. Andrews, Esq., appearing as counsel for Producers Transportation Company et al.; W. C. Wren, a shorthand reporter of the testimony and proceedings being present and acting as such; and the Court having ordered that the hearing proceed; and

Joseph P. McDonald, William O. Maxwell, and F. J. Burns, witnesses on behalf of defendants, having been called, duly sworn and having testified; and in connection with the testimony of said witnesses, the defendants having offered [177] a certain exhibit, same having been admitted in evidence, ordered filed and is as follows, to wit: Defendants' Ex. "E," being proof of labor; and now, at the hour

of 11:54 o'clock A. M., court having taken a recess until 2 o'clock P. M., and now, at the hour of 2 o'clock P. M., having reconvened, and counsel, with the exception of T. O. Toland, Esq., being present as before, and A. S. Custer, a shorthand reporter of the testimony and proceedings, being present and acting as such; and a certain lease from Joseph McDonald to the Dominion Oil Company, dated November 21, 1909, having been read into the record on behalf of defendant, Dominion Oil Company, and a stipulation having been entered into by and between counsel for plaintiff and defendant Dominion Oil Company as to certain evidence; and a statement of production and expenditures by the Bankline Oil Company property having been read into the record by defendants, and a like statement as to Barneson & Walker property having been read into the record; by consent of counsel for the respective parties, the answer of Barneson and Walker is hereby amended by inserting certain figures; and now, at the hour of 2:20 o'clock P. M., **IT IS ORDERED** that this cause be and the same hereby is continued until Friday, the 26th day of April, 1918, at the hour of 10 o'clock A. M., for further hearing. [178]

At a stated term, to wit, the January term, A. D. 1918, of the District Court of the United States of America, in and for the Southern District of California, Northern Division, held at the courtroom thereof, in the city of Los Angeles, on Friday, the twenty-sixth day of April, in the year of our Lord one thousand nine hundred and eighteen. Present: Honorable ROBERT S. BEAN, District Judge.

No. A.-58—EQ.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Minutes of Court—April 26, 1918—Order Submitting Cause.

This cause coming on this day for further proceedings on final hearing; Frank Hall, Esq., Special Assistant to the Attorney General, and Chas. D. Hamel, Esq., Special Assistant to the United States Attorney, appearing as counsel for plaintiff; J. R. Pringle, Esq., appearing as counsel for defendant, Dominion Oil Company; A. L. Weil, Esq., appearing as counsel for defendant, General Petroleum Company et al.; L. W. Andrews, Esq., and A. V. Andrews, Esq., appearing as counsel for Producers Transportation Company et al.; W. C. Wren, a shorthand reporter of the testimony and proceedings

being present and acting as such; and

Roy Jones, a witness on behalf of plaintiff, having been recalled to the stand by the defendants and having testified; thereupon the defendants rest; and arguments having been made, on behalf of plaintiff by Frank Hall, Esq., and on behalf of defendants by A. L. Weil, Esq., and now, at the hour of 12:03 o'clock P. M., court having taken a recess until 2 o'clock P. M., and now, at the hour of 2 o'clock P. M., court having reconvened, and counsel and shorthand reporter being present as before; and argument having been resumed by A. L. Weil, Esq., on behalf [179] of defendants, and further arguments on behalf of defendants having been made by J. R. Pringle, Esq., and A. V. Andrews, Esq., and reply argument having been made by Frank Hall, Esq., on behalf of plaintiff; it is thereupon by the Court ORDERED that this matter be submitted to the Court for its consideration and decision. [180]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. A.-58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY,

GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, GENERAL PETROLEUM CORPORATION, PRODUCERS TRANSPORTATION COMPANY, BRITISH-AMERICAN OIL COMPANY, NORTH MIDWAY OIL COMPANY, SUSAN ELLIOTT, A. P. PERKEY, F. J. ELLIOTT, JOHN BARNESON and WILLIAM WALKER,
Defendants.

Opinion.

FRANK HALL, Special Assistant to Attorney General.

CHAS. D. HAMMEL, Special Asst. to U. S. Attorney, Los Angeles, Appearing for the Government.

A. L. WEIL, San Francisco, appearing for General Petroleum Company, General Pipe-Line Company of California, General Petroleum Corporation, Bankline Oil Company, John Barbeson, Wm. Walker.

LANE, WHITE & ELLIOTT, San Francisco, Appearing for Independent Oil Producers Agency.

ANDREWS, TOLAND & ANDREWS, Los Angeles, Cal., Appearing for Producers Transportation Company, British-American Oil Company, North Midway Oil Company,

J. R. PRINGLE, San Francisco, Appearing for Dominion Oil Company.

MEMORANDUM BY BEAN, District Judge:

This suit involves the northwest quarter of Section fifteen, Township 31 South, Range 22 East, in the Midway Oil Fields of California. The land is oil bearing and is within the Presidential Withdrawal Order of [181] September 27, 1909.

At the time of withdrawal it was in possession of and claimed by the predecessors in interest of the defendants. The Government asserts (1) that the location under which the defendants claim was made for the benefit of the British-American Oil Company and to enable it to acquire title to a larger area of mining land than the law permits and is therefore fraudulent and void, and (2) that neither the defendants nor their predecessors in interest were in diligent prosecution of work leading to discovery within the meaning of the Pickett Act, at the time of withdrawal.

The issues thus presented are questions of fact and no useful purpose will be served by reviewing the evidence. It will suffice to state my conclusions in general without referring to the evidence in detail.

The paper location in question and about two hundred others were made on January 1, 1908, for the use and benefit of ex-United States Senators Dorsey and Jones, and Messrs. Butler, Elliott, Strong and McDonald, and their associates, fifteen persons in all. Under the arrangement between them, no one person was to have a larger interest in any one location than permitted by law. There is no legal limit to the number of locations an individual or as-

sociation of individuals may make, provided it is not intended that one person shall thereby acquire a larger area in one location than the law allows. Nor is it of any consequence that the location notices were not signed by the real parties in interest. There is nothing in the law that prohibits one from initiating a location by an agent. (McCullock vs. Murphy, 125 Fed. 147-149; Book vs. Justice Mng. Co., 58 Fed. 106; U. S. vs. McCutcheon, 217 Fed. 650.)

On March 4, 1908, the several locations were conveyed to Messrs. Elliott and Strong in trust for the respective [182] parties in interest. On May 4, 1909, Strong and Elliott conveyed them to the British-American Oil Company, a corporation, which had been organized some years before by McDonald and others, but which had never passed beyond a mere paper organization. No stock had ever been subscribed or issued except a few shares to qualify certain gentlemen as directors. The corporation had never done any business. It had no liabilities and no assets. It was nothing but a mere skeleton organization.

After the locations in question considerable discussion was had between the interested parties as to the best manner of handling the properties. A number of plans were suggested but finally as a matter of economy and convenience it was concluded to accept the offer of the organizers of the British-American Oil Company to use that corporation for such purpose. The former directors thereupon resigned and Messrs. Dorsey, Jones, Elliott, Strong

and McDonald were elected directors. Stock in the corporation was issued to the several parties in proportion to their interests in the locations, and the properties were thereafter managed and controlled by the corporation.

The evidence in my opinion wholly fails to show that the locations were made for and on behalf of the corporation, or that its existence was even known to most of the parties interested therein until after the locations had been made.

That the defendants and those under whom they claim were *bona fide* occupants and claimants of the property at the date of withdrawal clearly appears. The only remaining question is whether they were engaged in work leading to discovery within the meaning of the law.

As has been often said in this class of cases diligence or want of diligence within the meaning of the Pickett Act must be determined by the facts and circumstances of each case and a decision in one is of but little assistance in another. It appears from the evidence that early in September, 1909, [183] five or six of the parties interested in the property in controversy and who were willing to invest their money in its development concluded to form a subsidiary organization for that purpose. They thereupon made satisfactory arrangements with the parent corporation for possession and development of the property and each agreed to put into the enterprise the sum of five thousand dollars, making in the aggregate a fund of about twenty-five thousand dollars. They thereupon employed workmen, put them

in charge of the property, ordered lumber for a drilling rig, and so much thereof as could be had at the time was delivered on the premises about September 17, 1909. Two or three days later and prior to September 27th, an agreement was made with McDonell and Maxwell for a lease to them of the south half of the quarter, for which they agreed to pay three thousand dollars, and to reimburse the lessors for the expense previously incurred in the purchase and delivery of material and employment of workmen, and to begin drilling promptly. Maxwell and McDonell thereupon immediately took over the property covered by their lease, ordered a complete drilling outfit and began to assemble workmen and material as rapidly as the condition of the lumber and labor market would permit, preparatory to actual drilling. A cabin for the workmen was constructed sometime in November and work began on the derrick which was completed as soon as material could be secured for that purpose. Actual drilling was commenced early in December and oil discovered the latter part of that month. From the time the lumber was delivered on the property in September to the time the well was spudded in the property was continuously occupied by the employees of the lessees, engaged in such work as was possible preparatory to actual development. In short every reasonable effort seems to [184] have been made to proceed with the drilling and whatever delays occurred were due to the inability to secure material and workmen.

In my opinion the facts shown by the testimony bring the case within the case of *United States vs. Grass Creek Oil & Gas Company* (236 Fed. 481), decided by the Court of Appeals of the Eighth Circuit and cited with approval by the Court of Appeals of this Circuit in *Consolidated Mutual Oil Company vs. United States* (245 Fed. 521), and are such that the occupants would have been protected by the courts from intrusion by private parties at the time of withdrawal, and that I take it is the true test in cases of this character. (*U. S. vs. No. Am. Oil Co.*, 242 Fed. 723.)

It follows that the bill should be dismissed, and it is so ordered.

[Endorsed]: No. A.-58—Eq. United States District Court, Southern District of California, Northern Division. *United States of America v. Dominion Oil Co.* Opinion. Filed Jun. 8, 1918. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. [185]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. A.-58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL

COMPANY, STANDARD OIL COMPANY,
GENERAL PIPE-LINE COMPANY OF
CALIFORNIA, INDEPENDENT OIL PRO-
DUCERS AGENCY, GENERAL PETRO-
LEUM CORPORATION, PRODUCERS
TRANSPORTATION COMPANY, BRIT-
ISH-AMERICAN OIL COMPANY, NORTH
MIDWAY OIL COMPANY, SUSAN ELLI-
OTT, A. P. PERKEY, F. J. ELLIOTT, JOHN
BARNESON and WILLIAM WALKER,
Defendants.

Final Decree.

This cause having heretofore been heard on the pleadings and testimony, and argued by counsel, and it now appearing to the Court that the allegations of the bill are not sustained, and there is no equity therein, it is, therefore, ORDERED, ADJUDGED AND DECREED that the suit be and is hereby dismissed.

R. S. BEAN,
Judge.

Los Angeles, California, June 6th, 1918.

Decree entered and recorded June 7th, 1918.

CHAS. N. WILLIAMS,
Clerk.

By R. S. Zimmerman,
Deputy.

[Endorsed]: No. A.-58—Eq. United States District Court, Southern District of California, Northern Division. United States of America vs. Domin-

ion Oil Co. Decree. Filed June 7, 1918. Chas. N. Williams, Clerk. R. S. Zimmerman, Deputy. [186]

In the United States District Court for the Southern District of California, Northern Division.

IN EQUITY—No. A.-58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et als.,

Defendants.

Petition for Rehearing.

To the Honorable Judges of the District Court of the United States for the Southern District of California, Northern Division.

Comes now the petitioner, the United States of America, the plaintiff in the above-entitled cause, and respectfully asks for a rehearing of the matters decided in the opinion and decree in this cause filed June 7, 1918, upon the following grounds and for the following reasons:

1. The Court erred in holding that the defendants and those under whom they claim were *bona fide* occupants and claimants of the property at the date of the withdrawal of September 27, 1909.

2. The Court erred in failing to hold that the locators were not *bona fide* locators and that the location notice was posted in the interest and for the benefit of the defendant the British-American Oil

Company, a corporation, or of some one other than said locators, and to enable said corporation or some one other than the locators to acquire more than 20 acres of mineral land in violation of the laws of the United States.

3. The Court erred in failing to hold that the location notice was posted without intent on the part of the [187] persons named thereon or any other person or persons to prosecute discovery work on the lands embraced therein.

4. The Court erred in failing to hold that the locators did not act in good faith for their own benefit in that they acted without intent to prosecute development work leading to the discovery of oil, and that no right could be derived therefrom.

5. The Court erred in failing to find that no right could accrue to the claimant for the 160 acres claimed in the tract involved herein for the reason, if for no other reason, that there were eight original locators upon the 160 acre tract who had no valid claim thereto or right therein but transferred and assigned their pretended claims and interests therein to one corporation prior to discovery or any work thereon; and there was no inception of development work upon or under said 160 acre tract prior to said transfer or prior to the withdrawal order of September 27, 1909, and therefore the right thereto did not exist and was not given by the Act of March 2, 1911, or otherwise.

6. The Court erred in failing to hold that the material placed on the property in question and the occupancy thereof prior to September 27, 1909, were

intended merely to hold the property and prevent its acquisition and development by other persons instead of with the intent to begin and proceed with development with the diligence required by law, or at all.

7. The Court erred in finding in favor of the defendants and in ordering the dismissal of the bill.

8. The Court erred in failing to find in favor of the plaintiff and to enter a decree for it as to the tract involved in this cause.

Respectfully submitted, [188]

HENRY F. MAY,

FRANK HALL,

Special Assistants to the Attorney General,

C. D. HAMEL,

Special Assistant to the United States Attorney,

Solicitors for Plaintiff.

[Endorsed]: No. A.-58—Eq. In the Dist. Court of the United States for the *Sou. of Cal.* U. S. A. vs. Dominion Oil Co. Petition for Rehearing. Filed Aug. 10, 1918. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy. [189]

At a stated term, to wit, the November, A. D. 1918 term of the District Court of the United States, within and for the Northern Division of the Southern District of California, held at the courtroom thereof, in the city of Los Angeles, on the 9th day of December, in the year of our Lord one thousand nine hundred and eighteen. Present: The Honorable ROBERT S. BEAN, District Judge.

No. A.-58—EQ.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL CO. et al.,

Defendants.

**Minutes of Court—December 9, 1918—Order
Continuing Hearing of Motion for Rehearing.**

This cause coming on at this time for the hearing of the motion for a rehearing, Henry F. May, Esq., Frank Hall, Esq., and Charles D. Hamel, Esq., present in open court on the part of the plaintiff and Andrews, Toland & Andrews, counsel for Producers Transportation Co., and British-American Oil Co., present.

This cause is by the Court continued to the 6th day of January, 1919, for the hearing of said motion.
[190]

At a term of court, to wit, November term, A. D. 1919, of the District Court of the United States of America, in and for the Southern District of California, Northern Division, held at the courtroom thereof, in the city of Los Angeles, on Monday, the sixth day of January, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable ROBERT S. BEAN, District Judge.

No. A.-58—EQ.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

**Minutes of Court — January 6, 1919 — Order
Continuing Hearing of Motion for Rehearing.**

This matter coming on this day for the hearing of motion for rehearing herein; Henry F. May, Esq., Frank Hall, Esq., and Chas. D. Hamel, Esq., special assistants to the United States Attorney, appearing as counsel for plaintiff; A. V. Andrews, Esq., appearing as counsel for defendants Producers Transportation Company, and British American Oil Company; and good cause appearing therefor, it is by the Court ORDERED that this matter be and the same hereby is continued until Monday, the 13th day of January, 1919, for the hearing of said motion for rehearing, at San Francisco, California. [191]

At a term of court, to wit, November Term, A. D. 1919, of the District Court of the United States of America, in and for the Southern District of California, Northern Division, held at the city of San Francisco, on Monday, the thirteenth day of January, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable ROBERT S. BEAN, District Judge.

No. A.-58—EQ.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

**Minutes of Court — January 13, 1919—Order
Continuing Hearing of Motion for Rehearing.**

This matter coming on this day for the hearing of plaintiff's motion for a restraining order and receiver; Frank Hall, Esq., and Chas. D. Hamel, Esq., special assistants to the Attorney General, appearing as counsel for plaintiff; A. L. Weil, Esq., appearing as counsel for defendant Bankline Oil Company; upon motion of Frank Hall, Esq., counsel for defendant consenting thereto, and good cause appearing therefor, it is now by the Court ORDERED that this matter be and the same hereby is continued until Wednesday, the 15th day of January, 1919, for the hearing of said motion. [192]

At a term, to wit, the November, A. D. 1918, term of the District Court of the United States, within and for the Northern Division of the Southern District of California, held at the courtroom at San Francisco, on Wednesday, the 15th day of January, in the year of our Lord, one thousand nine hundred and nineteen. Present: The Honorable ROBERT S. BEAN, District Judge.

No. A.-58—EQ.

THE UNITED STATES OF AMERICA,
Complainants,

vs.

DOMINION OIL COMPANY et al.,
Defendants.

**Minutes of Court — January 15, 1919—Order
Continuing Hearing of Motion for Rehearing.**

This matter coming on this day for the hearing of motion for rehearing; Frank Hall, Esq., and Chas. D. Hamel, Esq., special assistants to the Attorney General, appearing as counsel for plaintiff; upon motion of Frank Hall, Esq., and good cause appearing therefor, it is now by the Court ORDERED that this matter be and the same hereby is continued until Monday, the 20th day of January, 1919, for the hearing of said motion. [193]

At a term, to wit, the November, A. D. 1918, term of the District Court of the United States, within and for the Southern District of California, Northern Division, held at the courtroom on Monday, the twentieth day of January, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable ROBERT S. BEAN, District Judge.

No. A.-58—EQ.

THE UNITED STATES OF AMERICA,
Complainants,

vs.

DOMINION OIL COMPANY et al.,
Defendants.**Minutes of Court — January 20, 1919—Order
Submitting Motion for Rehearing.**

This matter coming on this day for the hearing of plaintiff's motion for rehearing; Henry F. May, Esq., Frank Hall, Esq., and Chas. D. Hamel, Esq., special assistants to the Attorney General, appearing as counsel for plaintiff; A. L. Weil, Esq., appearing as counsel for defendant, Bankline Oil Company; arguments having been made, in support of said motion by Henry May, Esq., and in opposition thereto by A. L. Weil, Esq., it is thereupon ORDERED that this matter be and the same hereby is submitted to the Court for its consideration and decision. [194]

At a term, to wit, the November, A. D. 1918, term of the District Court of the United States, within and for the Northern Division of the Southern District of California, held at the courtroom at San Francisco, on Tuesday, the twenty-first day of January, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable ROBERT S. BEAN, District Judge.

No. A.-58—EQUITY N. D.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

**Minutes of Court — January 21, 1919—Order
Overruling Motion for Rehearing.**

This matter having heretofore been submitted to the Court on plaintiff's motion for rehearing, the Court being fully advised in the premises, now ORDERS that plaintiff's motion for rehearing be overruled and the petition denied. [195]

*In the District Court of the United States for the
Southern District of California, Northern Division.*

Hon. ROBERT S. BEAN, Judge Presiding.

No. A.-58—EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY et al.,

Defendants.

Opinion on Motion for Rehearing.

San Francisco, Cal., January 20, 1919. [196]

The COURT.—(Oral.) The Court is of the opin-

ion that the motion for rehearing in the case of United States vs. Dominion Oil Company should be denied. The motion is based, substantially, upon two grounds: First, that the location under which the defendant claims title was made for and on behalf of an association or syndicate of parties or gentlemen, numbering fifteen. It appears from the testimony quite clearly that under the arrangements between these gentlemen no one was to receive more or a larger area of any single location than the law permitted, and I know of no rule of law that prevents an association of that kind from making or having locations made on their behalf. Nor does the fact that some of the parties who signed the notices did not know the name of their principal invalidate the notice. They knew that they were not acting for themselves and were making the filings for and on behalf of some other person or persons, and the fact that their principal was undisclosed would not invalidate their action.

The second ground is that this location and others made for and on behalf of the syndicate, some two hundred in number, were speculations—and by that I understand counsel to mean that it was not the intention of the parties for whose benefit the locations were made to themselves develop the property, but that they made the locations with the purpose and expectation [197] of selling and disposing of some of them to other parties and profiting thereby.

I know of no statutory or other rule that forbids paper locations of this character, and these were but paper locations. They are not such as are recog-

nized by the law of the United States. But the practice seems to have grown up in this country of making such locations and the locator obtaining some rights that were recognized by the community. The courts have recognized their right to sell and dispose of their interest under such locations, and the fact that they made them for that purpose would not, in my judgment invalidate them.

So that the motion for rehearing will be denied.
[198]

[Endorsed]: No. A.-58—Equity. In the District Court of the United States for the Southern District of California, Northern Division. Hon. Robert S. Bean, Judge Presiding. United States of America, Plaintiff, vs. Dominion Oil Company et al., Defendants. Ruling on Motion for Rehearing. San Francisco, Cal., January 20, 1919. Filed Feb. 17, 1919. Chas. N. Williams, Clerk. By Maury Curtis, Deputy Clerk. Doyle & St. Maurice, Shorthand Reporters and Notaries, 503-508 California Building, Los Angeles, California, Main 2896. [199]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. A.-58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL

COMPANY, STANDARD OIL COMPANY,
GENERAL PIPE-LINE COMPANY OF
CALIFORNIA, INDEPENDENT OIL
PRODUCERS AGENCY, GENERAL PE-
TROLEUM CORPORATION, PRODU-
CERS TRANSPORTATION COMPANY,
BRITISH-AMERICAN OIL COMPANY,
NORTH MIDWAY OIL COMPANY,
SUSAN ELLIOTT, A. B. PERKEY, F. J.
ELLIOTT, JOHN BARNESON and WILL-
IAM WALKER,

Defendants.

**Stipulation and Order Enlarging Time to and
Including September 25, A. D. 1919, for Filing
Statement of Evidence.**

IT IS HEREBY STIPULATED by and between the parties hereto, by the respective solicitors, in the above-entitled cause, that the plaintiff and appellant, United States of America, may have up to and including the 25th day of September, A. D. 1919, within which to file for approval its statement of evidence to be incorporated in the record on appeal as provided in Equity Rule No. 75, and that the defendants and appellees may have ten (10) days from and after receiving notice of the filing of said statement of evidence with the clerk of the above-entitled court within which to file objections and proposed amendments thereto.

Dated this 20th day of August, 1919.

HENRY F. MAY,
FRANK HALL,

Special Assistants to the Attorney General.

CHAS. D. HAMEL,

Special Assistant to the United States Attorney, Solicitors for Plaintiff. [200]

A. L. WEIL,

Solicitors for General Petroleum Company, Bankline Oil Company, General Pipe-line Company of California, General Petroleum Corporation, John Barneson and William Walker.

J. R. PRINGLE,

Solicitor for Dominion Oil Company.

PILLSBURY MADISON & SUTRO,

Solicitor for Standard Oil Company.

ANDREWS, TOLAND & ANDREWS,

WEIL,

Solicitor for Independent Oil Producers Agency, Producers Transportation Company, North Midway Oil Company, British-American Oil Company, Susan Elliott, A. B. Perkey and F. J. Elliott.

IT IS SO ORDERED, this August 22, 1919.

BLEDSON,

District Judge.

[Endorsed]: No. A.-58. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America vs. Dominion Oil Company et al. Stipulation and Order Enlarging Time for Filing Statement of Evidence. Filed Aug. 22, 1919. Chas.

N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. [201]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

IN EQUITY—No. A.-58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, GENERAL PETROLEUM CORPORATION, PRODUCERS TRANSPORTATION COMPANY, BRITISH-AMERICAN OIL COMPANY, NORTH MIDWAY OIL COMPANY, SUSAN ELLIOTT, A. B. PERKEY, F. J. ELLIOTT, JOHN BARNESON, and WILLIAM WALKER,

Defendants.

Statement of the Evidence to be Incorporated in the Record on Appeal.

BE IT REMEMBERED that on the 22d day of April, A. D. 1918, the same being one of the juridical days of the special January, 1918, term of the District Court of the United States, within and for the

Northern Division of the Southern District of California, sitting at Los Angeles, California, the above-entitled cause came on for hearing before the Honorable ROBERT S. BEAN, the presiding Judge of said court. The plaintiff appearing by Henry F. May, and Frank Hall, Special Assistants to the Attorney General, and Charles [202] D. Hamel, Special Assistant to the United States Attorney, and the defendant Dominion Oil Company appearing by J. R. Pringle, Esq., the defendants General Petroleum Company, General Pipe-Line Company of California, Bankline Oil Company, General Petroleum Corporation, John Barneson, and William Walker appearing by A. L. Weil, Esq., the defendant Independent Oil Producers Agency appearing by Lane, White & Elliott, and the defendants Producers Transportation Company, British American Oil Company, and North Midway Oil Company appearing by Andrews, Toland & Andrews, the following proceedings were had, that is to say:

Thereupon the plaintiff, to maintain the issues herein on its behalf, offered and gave in evidence as follows, that is to say:

Mr. HALL.—The plaintiff offers in evidence the papers attached together which have been marked Plaintiff's Exhibit No. 1, which purports to be a photographic certified copy of the withdrawal order of September 27, 1909, as follows:

Plaintiff's Exhibit No. 1.

“WITHDRAWAL OF SEPTEMBER 27, 1909.

September 27, 1909.

The Honorable,

The Secretary of the Interior.

Sir:

In accordance with your orders I have the honor to submit the following recommendation which covers approximately 3,041,000 acres of which the larger part is probably private land and not affected by this withdrawal.

Temporary Petroleum Withdrawal No. 5.

In aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain, all public lands in the accompanying lists are hereby temporarily withdrawn from all forms of location, settlement, selection, filing, entry, or disposal under the mineral or non-mineral public land laws. All locations or claims existing and valid on this date may proceed to entry in the usual manner [203] after field investigation and examination.

* * * * *

T. 31 S., R. 22 E. All of Township.

* * * * *

Very respectfully,

H. C. RIZER,
Acting Director.

Approved September 27, 1909, and sent to General Land Office.

FRANK PIERCE,
Acting Secretary.

(Notification to Register and Receiver, Visalia, Oakland, Sacramento, Los Angeles, Buffalo, and Douglas, October 5, 1909.)”

Mr. WEIL.—I will ask Mr. Hall if he has any objection to having the record show that the Commissioner’s letter was dated October 5, 1909, and received at the local Land Office, at Visalia, on October 11, 1909.

Mr. HALL.—Subject to verification. I don’t doubt that at all.

The COURT.—That may be entered as a stipulation in the record, subject to correction.

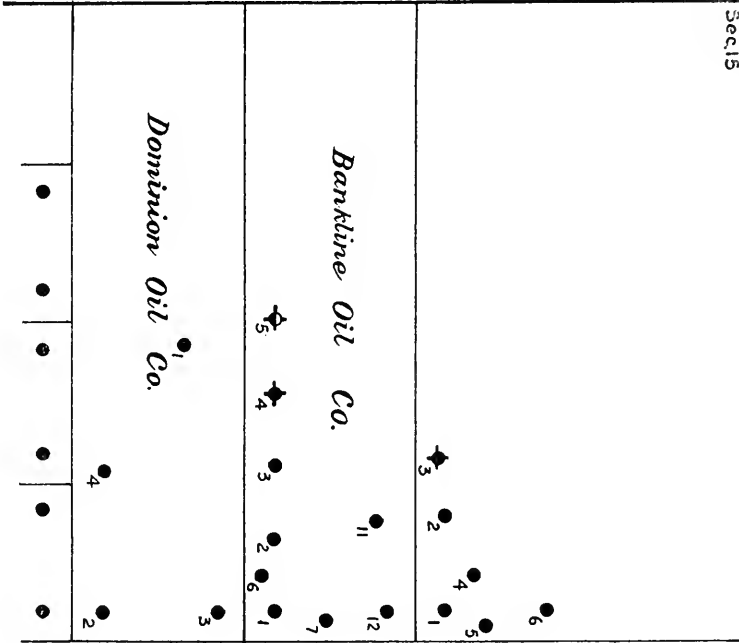
Mr. HALL.—The Commissioner’s letter was dated October 5th and was received at the Land Office October 11th.

Mr. HALL.—May the record show that the plaintiff offers in evidence the plat which has been marked Plaintiff’s Exhibit No. 2. It is offered in evidence merely as illustrative of the testimony and is as follows, to wit: [204]

Plaintiff's Exhibit No. 2.

Sec. 9
Sec. 16

Sec. 10
Sec. 15



MAP

NW¼ SEC. 15-T. 31 S.- R. 22 E.

MIDWAY OILFIELD - CALIFORNIA

3-23-18:

Scale 400 ft. to 1 inch

Note: Position of wells approximate

Mr. HALL.—The Government now offers in evidence the paper which has been marked Plaintiff's Exhibit No. 3, which purports to be a certified copy of a location notice of Placer Mining Claim Zee No. 8, embracing the northwest quarter of Section 15, Township 31 South, Range 22 East, and is as follows, omitting immaterial certificates and markings:

Plaintiff's Exhibit No. 3.

“NOTICE OF LOCATION—PLACER CLAIM.

Notice is hereby given, that the undersigned citizen of the United States in compliance with the requirements of the Revised Statutes of the United States have this day located the following described placer mining ground, situated in the County of Kern, State of California, in Mining District McKittrick and more particularly described as follows, to wit:

The Northwest quarter (NW. $\frac{1}{4}$) of Section Fifteen (15), Township Thirty-one (31) South, Range Twenty-two (22), East, M. D. B. & M., containing 160 acres more or less.

Said ground covered by said location is hereby claimed as a placer mining claim for mining and developing oil, petroleum, asphaltum, gypsum and any and all other mineral substances contained therein.

This notice is posted on the ground situated in the SE. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of said Section 15, at the point of discovery of a valuable placer deposit of petroleum, oil, asphaltum and gypsum. The boundaries of the land embraced within this claim are distinctly marked upon the ground by monuments and by the exterior line thereof.

This claim shall be known as the Zee No. 8 placer mining claim.

Located 12:01 A. M., first day of January, 1908.

Locators:

L. W. ANDREWS.

GEO. C. HALDEMAN.

FRANK R. STRONG.

STEPHEN W. DORSEY.

WALLACE D. DICKINSON

WARREN F. McGRATH.

GEO. W. DICKINSON.

O. C. GEBAUER.

Witness:

J. H. BODENHAUER.

Recorded at request of Wm. J. McDonald, Jan. 2, 1908, at 50 min. past 1 o'clock P. M. in Book 71 [206] of Mining Records, page 8, Kern County Records.

CHAS. A. LEE,

Recorder."

Mr. HALL.—Plaintiff now offers in evidence a number of sheets of paper attached together, which have been marked Plaintiff's Exhibit No. 4, which purports to be a certified copy of an indenture made on March 4, 1908.

The COURT.—Does that purport to have been executed by the—

Mr. HALL.—By the 21 people.

The COURT.—All the locators who are on this notice you have just offered?

Mr. HALL.—Yes, sir; they are included in the list; there are 14 others or 17 others.

The COURT.—But these are the locators or purported locators of the northwest of 15.

Mr. HALL.—Of 15, yes, your Honor. That is the location of Zee No. 8. There were 207 claims, and they are all known as Zee No. 1, No. 2 and so forth.

Mr. WEIL.—I would like to object to any part of that deed which refers to any location other than the location of this Zee No. 8, or any land other than said land.

The COURT.—Very well, that will be understood.

Plaintiff's Exhibit No. 4.

Exhibit No. 4 is as follows, omitting certificate of county recorder and file-marks:

“This Indenture made the 4th day of March, in the year of our Lord one thousand nine hundred and eight between B. Adams, L. W. Andrews, A. W. Casey, N. G. Casey, W. P. Casey, Wallace D. Dickin-son, *George W. Dickson*, Stephen W. Dorsey, L. B. Dorsey, M. Z. Elliott, O. C. Gebauer, F. J. Haldeman, George C. Haldeman, G. A. Horn, Addison C. Macon, Henry L. Musser, Warren J. McGrath, H. R. Mc-Donald, J. E. McDonald, Albert *Shaw* and Frank R. Strong, party of the first part, and Frank R. Strong [207] and M. Z. Elliott, Trustees, parties of the second part.

WITNESSETH:

That the said parties of the first part for and in consideration of the sum of Fifty Dollars (\$50.00) gold coin of the United States of America, and other valuable considerations, covenants and agreements to them in hand paid, by the said parties of the sec-

ond part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released and forever quitclaimed and by these presents to grant, bargain, sell, remise, release and forever quitclaim unto the said parties of the second part, and to their heirs and assigns all those certain mining claims particularly described as follows, to wit:

Zee No. 1, the Southeast quarter (SE. $\frac{1}{4}$) of Section Thirty-two (32), Township Thirty-one (31) South, Range Twenty-three (23) East, M. D. B. & M., containing 160 acres more or less, situate in the County of Kern, State of California, in Mining District, Midway and located January 1, 1908, location notice recorded January 2d, 1908, in Vol. 71 of Miscellaneous Records of Kern County, California.

Zee No. 2, the Northeast quarter (NE. $\frac{1}{4}$) of Section Thirty-two (42), Township Thirty-one (31) South, Range Twenty-three (23) East, M. D. B. & M., containing 160 acres more or less, location, recordation, district, County and State same as above.

Zee No. 3, the Northwest quarter (NW. $\frac{1}{4}$) of Section Thirty-two (32), in Township Thirty-one (31) South, Range Twenty-three (23) East, M. D. B. & M., containing 160 acres more or less, situation, location, recordation, district, County and State same as above.

Zee No. 3, the Northwest quarter (NW. $\frac{1}{4}$) of Section (32), Township Thirty-one (31) South, Range Twenty-three (23) East, M. D. B. & M., containing 160 acres more or less, situation, location, recordation, district, County and State same as above.

Zee No. 4, the Southwest quarter of Section Thirty-two (32), Township Thirty-one (31) South, Range Twenty-three (23) East, M. D. B. & M., containing 160 acres more or less, situation, location, recordation, district, County and State same as above.

Zee No. 5, the Southeast quarter (SE. $\frac{1}{4}$) of Section Thirty (30), Township Thirty-one (31) South, Range Twenty-three (23) East, M. D. B. & M., containing 160 acres more or less, situation, location, recordation, district, County and State same as above.

Zee No. 6, the Northeast quarter (NE. $\frac{1}{4}$) of Section Thirty (30), Township Thirty-one (31) South, Range Twenty-three [208] (23) East, M. D. B. & M., containing 160 acres more or less, same district, location, recordation, etc., as above.

Zee No. 7, the Northwest quarter (NW. $\frac{1}{4}$) of Section Thirty (30), Township Thirty-one (31) South, Range Twenty-three (23) East, M. D. B. & M., containing 160 acres more or less, same district, location, recordation, etc., as above.

Zee No. 8, the Northwest quarter (NW. $\frac{1}{4}$) of Section Fifteen (15), Township Thirty-one (31) South, Range Twenty-two (22) East, M. D. B. & M., containing 160 acres more or less, McKittrick District, location, recordation, etc., same as above.

Zee No. 9, the Southeast quarter (SE. $\frac{1}{4}$) of Section Fifteen (15), Township Thirty-one (31) South, Range Twenty-two (22) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 10, the Southwest quarter (SW. $\frac{1}{4}$) of Section Fifteen (15), Township Thirty-one (31) —, Range Twenty-two (22) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 11, the Southeast quarter (SE. $\frac{1}{4}$) of Section Thirty-two (32), Township Twenty-seven (27) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres, more or less, Devils Den District, location, recordation, etc., same as above.

Zee No. 12, the Northeast quarter (NE. $\frac{1}{4}$) of Section Thirty-two (32), Township Twenty-seven (27) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 13, the Northwest quarter (NW. $\frac{1}{4}$) of Section Thirty-two (32), Township Twenty-seven (27) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 14, the Southwest quarter (SW. $\frac{1}{4}$) of Section Thirty-two (32), Township Twenty-seven (27) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 15, the Southeast quarter (SE. $\frac{1}{4}$) of Section Six (6), Township Twenty-seven (27) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 16, the Northwest quarter (NW. $\frac{1}{4}$) of Section Seven (7), Township Twenty-seven (27)

South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above. [209]

Zee No. 17, the Southeast quarter (SE. $\frac{1}{4}$) of Section Seven (7), Township Twenty-seven (27) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 52, the South Half of Northeast quarter of Northeast quarter of Section Two (2), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 80 acres more or less, Temblor District, location, recordation, etc., same as above.

Zee No. 53, the Southeast quarter (SE. $\frac{1}{4}$) of Section Twenty-two (22), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres or less, district, location, recordation, etc., same as above.

Zee No. 54, the Southwest quarter of Section Twenty-two (22), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 55, the Northeast quarter of Section Twenty-two (22), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 56, the Southwest quarter (SW. $\frac{1}{4}$) of Section Fifteen (15), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M.,

containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 57, the Northwest quarter (NW. $\frac{1}{4}$) of Section Fifteen (15), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 58, the Northeast quarter (NE. $\frac{1}{4}$) of Section Fifteen (15), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 59, the Southwest quarter (SW. $\frac{1}{4}$) of Section Eleven (11), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., *more or less, district, location, recordation, etc., same as above.*

Zee No. 60, the Southeast quarter (SE. $\frac{1}{4}$) of Section Eleven (11), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above. [210]

Zee No. 61, the Northeast quarter (NE. $\frac{1}{4}$) of Section Eleven (11), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 62, the Northwest quarter (NW. $\frac{1}{4}$) of Section Eleven (11), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M.,

containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 63, the Southwest quarter (SW. $\frac{1}{4}$) of Section One (1), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 64, the Northwest quarter (NW. $\frac{1}{4}$) of Section One (1), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 65, the Northeast quarter (NE. $\frac{1}{4}$) of Section One (1), Township Twenty-nine (29) South Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 66, the Southwest quarter (SW. $\frac{1}{4}$) of Section Two (2), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 67, the South Half of the South Half of Section Three (3), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 68, the Southeast quarter (SE. $\frac{1}{4}$) of Section Four (4), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 69, the Southwest quarter of Section Four (4), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 70, the Northwest quarter (NW. $\frac{1}{4}$) of Section Four (4), Township Twenty-nine South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 71, the Northeast quarter (NE. $\frac{1}{4}$) of Section [211] Four (4), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 72, the Southwest quarter (SW. $\frac{1}{4}$) of Section Ten (10) Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 73, the South half of the Southeast quarter of Section Ten (10), Township Twenty-nine South, Range Twenty (20) East, M. D. B. & M., containing 80 acres more or less, district, location, recordation, etc., same as above.

Zee No. 74, the South half (S. $\frac{1}{2}$) of the Northwest quarter (NW. $\frac{1}{4}$) and the Northeast quarter (NE. $\frac{1}{4}$) of the Northwest quarter (NW. $\frac{1}{4}$) of Section Ten (10), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 120 acres more or less, district, location, recordation, etc., same as above.

Zee No. 75, the Northeast quarter (NE. $\frac{1}{4}$) of Section Six (6), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, Devil's Den Dis., location, recordation, etc., same as above.

Zee No. 76, of the Northeast quarter (NE. $\frac{1}{4}$) of Section Five (5), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 77, the Northwest quarter of Section Four (4), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 78, the Northeast quarter (NE. $\frac{1}{4}$) of Section Nineteen (19) Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 79, the Southwest quarter (SW. $\frac{1}{4}$) of Section Nineteen (19) Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 80, the Northwest quarter (NW. $\frac{1}{4}$) of Section Twenty (20), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above. [212]

Zee No. 81, the Southeast quarter (SE. $\frac{1}{4}$) of Section Twenty (20), Township Twenty-six (26)

South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, recordation, location, etc., same as above.

Zee No. 82, the Northwest quarter (NW. $\frac{1}{4}$) of Section Twenty-nine (29) Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 83, the Northeast quarter (NE. $\frac{1}{4}$) of Section Twenty-nine (29), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, same as above.

Zee No. 84, the Southwest quarter (SW. $\frac{1}{4}$) of Section Twenty-nine (29), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 85, the Southeast quarter (SE. $\frac{1}{4}$) of Section Twenty-nine (29), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc. same as above.

Zee No. 86, the Northwest quarter of Section Twenty-eight (28), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc. same as above.

Zee No. 87, the Northeast quarter (NE. $\frac{1}{4}$) of Section Twenty-eight (28), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. &

M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 88, the Southwest quarter (SW. $\frac{1}{4}$) of Section Twenty-eight (28), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 89, the Southeast quarter (SE. $\frac{1}{4}$) of Section Twenty-eight (28), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 90, the Northwest quarter (NW. $\frac{1}{4}$) of Section Twenty-seven (27), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above. [213]

Zee No. 91, the Southwest quarter (SW. $\frac{1}{4}$) of Section Twenty-seven (27), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 92, the Northeast quarter (NE. $\frac{1}{4}$) of Section Thirty-two (32), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 93, the Southwest quarter (SW. $\frac{1}{4}$) of Section Thirty-two (32), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 94, the Southeast quarter (SE. $\frac{1}{4}$) of Section Thirty-two (32), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 95, the Northwest quarter (NW. $\frac{1}{4}$) of Section Thirty-three (33), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 96, the Southwest quarter (SW. $\frac{1}{4}$) of Section Thirty-three (33), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 97, the Northeast quarter (NE. $\frac{1}{4}$) of Section Thirty-three (33), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 98, the Southeast quarter of Section Thirty-three (33), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 99, the Northwest quarter (NW. $\frac{1}{4}$) of Section Thirty-four (34), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 100, the Northeast quarter (NE. $\frac{1}{4}$) of Section One (1), Township Twenty-seven (27)

South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, [214] recordation, etc., same as above.

Zee No. 101, the Southeast quarter of Section One (1), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 102, the Southwest quarter (SW. $\frac{1}{4}$) of Section One (1), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 103, Northwest quarter of Section One (1), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 104, the Northeast quarter of Section Two (2), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 105, the Southeast quarter (SE. $\frac{1}{4}$) of Section Two (2), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 106, Southwest quarter (SW. $\frac{1}{4}$) of Section Two (2), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M.,

containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 107, the Northwest quarter (NW. $\frac{1}{4}$) of Section Two (2), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 108, Northeast quarter (NE. $\frac{1}{4}$) of Section Three (3), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres, district, location, recordation, etc., same as above.

Zee No. 109, the Southeast quarter of Section Three (3), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 110, the Southwest quarter (SW. $\frac{1}{4}$) of Section Three (3), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing [215] 160 acres more or less, district, location, recordation, same as above.

Zee No. 111, Northwest quarter of Section Three (3), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 112, Northeast quarter of Section Four (4), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 113, Southeast quarter of Section Four (4), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 114, Southwest quarter Section Four (4), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 115, Northwest quarter (NW. $\frac{1}{4}$) of Section Four (4), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 116, Northeast quarter of Section Five (5), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 117, Northwest quarter (NW. $\frac{1}{4}$) of Section Five (5), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 118, Northwest quarter (NW. $\frac{1}{4}$) of Section Eight (8), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 119, Northeast quarter (NE. $\frac{1}{4}$) of Section Eight (8), Township Twenty-seven (27) South,

Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 120, Southwest quarter (SW. $\frac{1}{4}$) of Section [216] Eight (8), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 121, Southeast quarter (SE. $\frac{1}{4}$) of Section Eight (8), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee — 122, Northeast quarter (NE. $\frac{1}{4}$) Section Nine (9), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 123, Southeast quarter (SE. $\frac{1}{4}$), Section Nine (9), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 124, Northwest quarter (NW. $\frac{1}{4}$) Section Ten (10), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 125, Northeast quarter (NE. $\frac{1}{4}$) Section Ten (10), Township Twenty-seven South, Range Eighteen East, M. D. B. & M., containing 160 acres,

more or less, district, location, recordation, etc., same as above.

Zee No. 126, Southeast quarter (SE. $\frac{1}{4}$) Section Ten (10), Township Twenty-seven (27) South, Range Eighteen east, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 127, Southwest quarter (SW. $\frac{1}{4}$) Section Ten (10), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 128, Northwest quarter (NW. $\frac{1}{4}$) Section Eleven (11), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 129, Southwest quarter (SW. $\frac{1}{4}$) Section Eleven (11), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above. [217]

Zee No. 130, Northeast quarter (NE. $\frac{1}{4}$) of Section Eleven (11), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, same as above.

Zee No. 131, Southeast quarter (SE. $\frac{1}{4}$) Section Eleven (11), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 132, Northwest quarter (NW. $\frac{1}{4}$) Section Twelve (12), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 133, Northeast quarter (NE. $\frac{1}{4}$) Section Twelve (12), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 134, Southeast quarter (SE. $\frac{1}{4}$) Section Twelve (12), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 135, Southwest quarter (SW. $\frac{1}{4}$) Section Twelve (12), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 136, Northwest quarter (NW. $\frac{1}{4}$) Section Fourteen (14), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 137, Southeast quarter (SE. $\frac{1}{4}$) Section Fifteen (15), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 138, Southwest quarter (SW. $\frac{1}{4}$) Section Fifteen (15), Township Twenty-seven (27) South,

Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 139, Northeast quarter (NE. $\frac{1}{4}$) Section Fifteen (15), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above. [218]

Zee No. 140, Northwest quarter (NW. $\frac{1}{4}$) Section Fifteen (15), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 141, Southeast quarter (SE. $\frac{1}{4}$) Section Seventeen (17), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 142, Northeast quarter (NE. $\frac{1}{4}$) Section Seventeen (17), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 143, Northwest quarter (NW. $\frac{1}{4}$) Section Seventeen (17), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 144, Southwest quarter (SW. $\frac{1}{4}$) Section Seventeen (17), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160

acres more or less, district, location, recordation, etc., same as above.

Zee No. 145, Northeast quarter (NE. $\frac{1}{4}$) Section Twenty-nine (29), Township Twenty-seven (27), South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location recordation, etc., same as above.

Zee No. 146, Northwest quarter, Section Twenty-eight (28), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 147, Northwest quarter (NW. $\frac{1}{4}$) Section Twenty-seven (27), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location recordation, etc., same as above.

Zee No. 148, Northeast quarter (NE. $\frac{1}{4}$) Section Twenty-seven (27), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location recordation, etc., same as above.

Zee No. 149, Southwest quarter (SW. $\frac{1}{4}$) Section Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.
[219]

Zee No. 150, Southeast quarter (SE. $\frac{1}{4}$) Section Twenty-seven (27), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location recordation, etc., same as above.

Zee No. 151, Northwest quarter (NW. $\frac{1}{4}$) Section Twenty-two (22), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 152, Southeast quarter (SE. $\frac{1}{4}$) Section Twenty-two (22), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 153, Northwest quarter (NW. $\frac{1}{4}$) Section Twenty-six (26), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., district, location, recordation, etc., same as above and containing 160 acres of land more or less.

Zee No. 154, Southwest quarter (SW. $\frac{1}{4}$) Section Twenty-six (26), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 155, Northeast quarter (NE. $\frac{1}{4}$) Section Twenty-six (26), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 156, Southeast quarter (SE. $\frac{1}{4}$) Section Twenty-six (26), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 157, Northeast quarter (NE. $\frac{1}{4}$) Section Twenty-three (23), Township Twenty-seven (27)

South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 158, Southwest quarter (SW. $\frac{1}{4}$) Section Twenty-three (23), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 159, Northeast quarter (NE. $\frac{1}{4}$) Section Twenty-three (23), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above. [220]

Zee No. 160, Southeast quarter (SE. $\frac{1}{4}$) Section Twenty-three (23), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, same as above, etc.

Zee No. 161, Northwest quarter (NW. $\frac{1}{4}$) Section Twenty-four (24), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 162, Southwest quarter (SW. $\frac{1}{4}$) Section Twenty-four (24), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 163, Northeast quarter (NE. $\frac{1}{4}$) Section Twenty-four (24), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., con-

taining 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 164, the Southeast quarter (SE. $\frac{1}{4}$) Section Twenty-four (24), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 165, Northwest quarter (NW. $\frac{1}{4}$) Section six (6), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 166, Northeast quarter (NE. $\frac{1}{4}$) Section six (6), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 167, Southwest quarter (SW. $\frac{1}{4}$) Section six (6), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 168, Southwest quarter (SE. $\frac{1}{4}$) Section six (6), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 169, Northwest quarter (NW. $\frac{1}{4}$) Section Five (5), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above. [221]

Zee No. 170, Northeast quarter (NE. $\frac{1}{4}$) Section Five (5), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 171, Southwest quarter (SW. $\frac{1}{4}$) Section Five (5), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 172, Southeast quarter (SE. $\frac{1}{4}$) Section Five (5), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 173, Northwest quarter (NW. $\frac{1}{4}$) Section Four (4), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 174, Southwest quarter (SW. $\frac{1}{4}$) Section Four (4), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 175, West half of the East half of Section Four (4), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 176, Northwest quarter (NW. $\frac{1}{4}$) Section Eight (8) Township Twenty-eight (28) South,

Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, same as above.

Zee No. 177, Northeast quarter (NE. $\frac{1}{4}$) Section Eight (8) Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more or less, location, recordation, etc., same as above.

Zee No. 178, Southwest quarter (SW. $\frac{1}{4}$) Section Eight (8) Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 179, Southeast quarter (SE. $\frac{1}{4}$) Section Eight (8) Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 180, West half of the West half (W. $\frac{1}{2}$ of W. ($\frac{1}{2}$) of Section Nine (9), Township Twenty-eight (28) South, [222] Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 181, the South half of the Southeast quarter and the Northeast quarter of the Southeast quarter and the Southeast quarter of the Northeast quarter of Section Nine (9), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 182, Southwest quarter (SW. $\frac{1}{4}$) Section

Three (3), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 183, North half of the Northeast quarter and the Northeast quarter of the Northwest quarter of Section Ten (10), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 120 acres more or less, district, location, recordation, etc., same as above.

Zee No. 184, Southwest quarter (SW. $\frac{1}{4}$) Section Eleven (11), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 185, Southeast quarter (SE. $\frac{1}{4}$) Section Eleven (11), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 186, Northwest quarter, section fifteen (15), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 187, Northeast quarter (NE. $\frac{1}{4}$) Section Fifteen (15), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 188, Southwest quarter (SW. $\frac{1}{4}$) Section Fifteen (15), Township Twenty-eight (28) South,

Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 189, Southeast quarter (SE. $\frac{1}{4}$) Section Fifteen (15), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more [223] or less, district, location, recordation, etc., same as above.

Zee No. 190, West half of the Northwest quarter and the Northeast quarter of the Northwest quarter of Section Fourteen (14), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 120 acres more or less, district, location, recordation, etc., same as above.

Zee No. 191, Northeast quarter of the Northeast quarter of Section Fourteen (14), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 40 acres more or less, district, location, recordation, etc., same as above.

Zee No. 192, the Northwest quarter (NW. $\frac{1}{4}$) of Section Thirteen (13), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 193, Northeast quarter (NE. $\frac{1}{4}$) Section Thirteen (13), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 194, Southwest quarter (SW. $\frac{1}{4}$) Section Thirteen (13), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., contain-

ing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 195, Southeast quarter (SE. $\frac{1}{4}$) Section Thirteen (13), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 196, South half of the North half of Section Twenty-two (22), Township Twenty-eight (28) South, range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 197, Southwest quarter (SW. $\frac{1}{4}$) Section Twenty-two (22), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 198, Southeast quarter (SE. $\frac{1}{4}$) Section Twenty-two (22), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 199, Northwest quarter (NW. $\frac{1}{4}$) Section [224] Twenty-three (23), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 200, Northeast quarter (NE. $\frac{1}{4}$), Section Twenty-three (23), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 201, Southwest quarter (SW. $\frac{1}{4}$), Section Twenty-three (23), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less.

Zee No. 202, Southeast quarter, Section Twenty-three (23), Township Twenty-eight South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 203, Northwest quarter, Section Twenty-six (26), Township Twenty-eight South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 204, South half of Northeast quarter and the Northwest quarter of the Northeast quarter, Section Twenty-six (26), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 205, Southwest quarter (SW. $\frac{1}{4}$) of Section Twenty-six (26), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 206, Southeast quarter (SE. $\frac{1}{4}$), Section Twenty-six (26), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 207, Southwest quarter, Section Twenty-five (25), Township Twenty-eight (28) South, Range

Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 208, Southwest quarter (SW. $\frac{1}{4}$), Section Ten (10), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 209, North half of the Northwest quarter of Section Thirty-four (34), Township Twenty-six (26) South, Range Seventeen East, M. D. B. & M., containing 80 acres more or less, district, location, recordation, etc., same as above. [225]

Zee No. 210, Northeast quarter (NE. $\frac{1}{4}$) of Section Thirty-four (34), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 211, Southeast quarter (SE. $\frac{1}{4}$) of Section Thirty-four (34), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 212, Northwest quarter of Section Thirty-five (35), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 213, Southwest quarter (SW. $\frac{1}{4}$) of Section Thirty-five (35), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M.,

containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 214, Northeast quarter (NE. $\frac{1}{4}$) of Section Thirty-five (35), Township Twenty-six (26) —, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 215, Southeast quarter (SE. $\frac{1}{4}$) of Section Thirty-five (35), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, same as above.

Zee No. 216, Northwest quarter (NW. $\frac{1}{4}$) of Section Thirty (30), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, Temblor District, location, recordation, etc., same as above.

Zee No. 217, Southwest quarter (SW. $\frac{1}{4}$) of Section Thirty (30), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 218, Northwest quarter (NW. $\frac{1}{4}$) of Section Thirty-one (31), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 219, Southwest quarter (SW. $\frac{1}{4}$) of Section Thirty-one (31), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above. [226]

Zee No. 220, Northeast quarter (NE. $\frac{1}{4}$) of Section Thirty-one (31), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 221, Northeast quarter (NE. $\frac{1}{4}$) of Section Thirty-two (32), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 222, Northwest quarter (NW. $\frac{1}{4}$) of Section Thirty-three (33), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 223, Southwest quarter (SW. $\frac{1}{4}$) of Section Thirty-three (33), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 224, Northeast quarter (NE. $\frac{1}{4}$) of Section Thirty-three (33), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less.

Zee No. 225, Southeast quarter (SE. $\frac{1}{4}$) of Section Thirty-three (33), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 226, Southwest quarter (SW. $\frac{1}{4}$) of Section Thirty-four (34), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., con-

taining 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 227, West half (W. $\frac{1}{2}$) of Southeast quarter (SE. $\frac{1}{4}$) of Section Thirty-four (34), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 80 acres more or less, district, location, recordation, etc., same as above.

Zee No. 235, North half of the Northeast quarter and the East half of the Northwest quarter of Section Twenty-one (21), Township Twenty-six (26) South, Range Seventeen (17) East, M. D. B. & M., containing 160 acres more or less, Devil's Den District, location, recordation, etc., same as above.

Zee No. 238, North half of the Northeast quarter of Section Twenty-nine (29), Township Twenty-six (26) South, Range Seventeen (17) East, M. D. B. & M., containing 80 acres more or less, district, location, recordation, etc., same as above. [227]

Zee No. 239, Southeast quarter (SE. $\frac{1}{4}$) of Section Twenty-two (22), Township Twenty-six (26) South, Range Seventeen (17) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 240, Northeast quarter (NE. $\frac{1}{4}$) Section Twenty-eight (28), Township Twenty-six (26) South, Range Seventeen (17) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 241, Southeast quarter (SE. $\frac{1}{4}$) Section Twenty-eight (28), Township Twenty-six (26) South, Range Seventeen (17) East, M. D. B. & M., containing 160 acres more or less, district, location,

recording, etc., same as above.

Zee No. 242, Northwest quarter (NW. $\frac{1}{4}$) of Section Twenty-seven (27), Township Twenty-six (26) South, Range Seventeen (17) East, M. D. B. & M., containing 160 acres more or less, district, location, recording, etc., same as above.

Zee No. 243, Southwest quarter Section Twenty-seven (27), Township Twenty-six (26) South, Range Seventeen (17) East, M. D. B. & M., containing 160 acres more or less, district, location, recording, etc., same as above.

Zee No. 244, Northeast quarter, Section Thirty-three (33), Township Twenty-six (26) South, Range Seventeen (17) East, M. D. B. & M., containing 160 acres more or less, district, location, recording, etc., same as above.

Zee No. 250, Southwest quarter (SW. $\frac{1}{4}$) of Section Four (4), Township Thirty-one (31) South, Range Twenty-two (22), East, M. D. B. & M., containing 160 acres more or less, McKittrick District, location, recording, etc., same as above.

Zee No. 251, North half (N. $\frac{1}{2}$) of South half (S. $\frac{1}{2}$) of Section Ten (10), Township Thirty (30) South, Range Twenty-one (21) East, M. D. B. & M., containing 160 acres more or less, district, location, recording, etc., same as above.

Zee No. 252, Lots one (1), Two (2), and Three (3), and the Southwest quarter (SW. $\frac{1}{4}$) of the Southwest quarter (SW. $\frac{1}{4}$) of Section Ten (10), Township Thirty (30) South, Range Twenty-one (21) East, M. D. B. & M., district, location, recording, etc., same as above.

Zee No. 253, West half (W. $\frac{1}{2}$) of Southwest quarter (SW. $\frac{1}{4}$) of Section Thirty-one (31), Township Twenty-nine (29) South, Range Twenty-one East (21 E.), M. D. B. & M., district, location, recordation, etc., same as above.

Zee No. 254, Lots Six (6), Seven (7) and Eight (8), in Section Four (4), Township Thirty (30) South, Range Twenty-one (21) East, M. D. B. & M., district, location, recordation, etc., same as above.

Zee No. 255, Lots Thirteen (13), Fourteen (14) and [228] Fifteen (15) in Section Two (2), Township Thirty (30) South, Range Twenty-one (21) East, M. D. B. & M., district, location, recordation, etc., same as above, each and all of said location notices, recorded Jan. 2, 1908, in vol. 71 of Miscellaneous Records of Kern County, California, together with all the dips, spurs and angles and also all the metals, ores, gold and silver bearing quartz rock and earth therein, as also all deposits of oil or petroleum or oil bearing rock, and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed, also, all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof and also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity, of the said parties of the first part, of in or to the said premises, and as part and parcel thereto with the appurtenances.

To have and to hold all and singular the said premises, together with the appurtenances and privileges

thereunto incident unto the said parties of the second part.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

B. ADAMS.	(Seal)
LEWIS W. ANDREWS.	(Seal)
A. W. CASEY.	(Seal)
N. G. CASEY.	(Seal)
W. P. CASEY.	(Seal)
WALLACE D. DICKINSON.	(Seal)
GEO. W. DICKSON.	(Seal)
STEPHEN W. DORSEY.	(Seal)
L. B. DORSEY.	
M. Z. ELLIOTT.	(Seal)
O. C. GEBAUER.	(Seal)
G. A. HORN.	(Seal)
ADDISON C. MACON.	(Seal)
F. J. HALDEMAN.	(Seal)
WARREN F. McGRATH.	(Seal)
H. R. McDONALD.	(Seal)
J. E. McDONALD.	(Seal)
ALBERT G. SHAW.	(Seal)
FRANK R. STRONG.	(Seal)
GEORGE C. HALDEMAN.	(Seal)
HENRY L. MUSSER.	(Seal)

State of California,
County of Los Angeles,—ss.

On this 4th day of March, in the year of our Lord One Thousand Nine Hundred and Eight, before me James B. Hobbs, a Notary Public, in and for said County of Los Angeles, State of California, resid-

ing therein, duly commissioned and sworn personally appeared B. Adams, L. W. Andrews, A. W. Casey, N. G. Casey, W. P. Casey, Wallace D. Dickinson, George W. Dickinson, Stephen W. Dorsey, L. B. Dorsey, M. Z. Elliott, O. C. Gebauer, F. J. Halderman, George C. Haldeman, G. A. Horn, Addison C. Macon, Henry L. Musser, Warren F. McGrath, H. R. McDonald, J. E. McDonald, Albert — Shaw, and Frank R. Strong, known to me to be the persons whose names are subscribed to the within and annexed instrument and acknowledged to me that they executed the same. [229]

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said County, the day and year in this Certificate first above written.

(Seal)

JAMES B. HOBBS,

Notary Public, in and for Los Angeles County, State of California.

Recorded at request of Roy Jones, May 27, 1909, at 58 min. past 4 P. M. in Book 217 of Deeds, page 62 of Kern County Records.

CHAS. A. LEE,

Recorder.”

The COURT.—Are the Elliott and Strong, the grantees in that conveyance, the locators?

Mr. HALL.—Frank Strong was one of the locators on this particular quarter.

The COURT.—And he is one of the trustees?

Mr. HALL.—He is named as one of the trustees; he is on both sides of the parties in this particular instrument; he is grantee and grantor.

Mr. PRINGLE.—In one case he is there in an in-

dividual capacity, and in the other in a trust capacity.

The COURT.—I understand that but I wanted to get whether he is the same individual.

Mr. HALL.—Yes, he is the same individual.

Mr. HALL.—The Government offers in evidence the papers which have been marked Plaintiff's Exhibit No. 5, which purports to be a certified copy of an instrument made on the 4th day of May, 1909, between Frank R. Strong and M. Z. Elliott, trustees, parties of the first part, and the British-American Oil Company, a corporation, party of the second part.

Mr. WEIL.—I think the only objection we have to that deed is in so far as it describes any lands other than those involved in this suit.

Plaintiff's Exhibit No. 5 is as follows, omitting [230] the certificate of County Recorder and filing-marks:

Plaintiff's Exhibit No. 5.

“This indenture made this 4th day of May in the year of our Lord one thousand nine hundred and nine, between Frank R. Strong and M. Z. Elliott, trustees, parties of the first part, and British-American Oil Company, a corporation, organized and existing under the laws of the State of California, party of the second part.

Witnesseth: That the said parties of the first part for and in consideration of the sum of Fifty Dollars (\$50.00) gold coin of the United States of America, and other valuable considerations, covenants and agreements, to them in hand paid by the said party

of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released and forever quitclaimed, and by these presents do grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part and to its successors and assigns all those certain placer mining claims, situated in the State of California and more particularly described as follows, to wit:

Zee No. 1, the Southeast quarter (SE. $\frac{1}{4}$), Section Thirty-two (32), Township Thirty-one (31) South, Range Twenty-three (23) East, M. D. B. & M., containing 160 acres more or less, situated in the county of Kern, State of California, in Mining District Midway, and located January 1, 1908, location notice recorded January 2, 1908, in Vol. 71 of Miscellaneous Records of Kern County, California.

Zee No. 2, the Northeast quarter (NE. $\frac{1}{4}$) of Section Thirty-two (32), Township Thirty-one (31) South, Range Twenty-three (23) East, M. D. B. & M., containing 160 acres more or less, location, recordation, district, county and state same as above.

Zee No. 3, the Northwest quarter (NW. $\frac{1}{4}$) of Section Thirty-two (32), Township Thirty-one (31) South, Range Twenty-three (23) East, M. D. B. & M., containing 160 acres more or less, situation, location, recordation, district, county and state same as above.

Zee No. 4, the Southwest quarter (SW. $\frac{1}{4}$) of Section Thirty-two (32), Township Thirty-one (31) South, Range Twenty-three (23) East, M. D. B. & M., containing 160 acres more or less, situation, location, recordation, district, county and state same as above.

Zee No. 5, the Southeast quarter of Section Thirty (30), Township Thirty-one (31) South, Range Twenty-three (23) East of M. D. B. & M., containing 160 acres more or less, situation, location, recordation, district, county and state same as above.

Zee No. 6, the Northeast quarter (NE. $\frac{1}{4}$) of Section Thirty (30), Township Thirty-one (31) South, Range Twenty-three (23) East, M. D. B. & M., containing 160 acres, more or less, same district, location, recordation, etc., as above. [231]

Zee No. 7, the Northwest quarter (NW. $\frac{1}{4}$) of Section Thirty (30), Township Thirty-one (31), South Range Twenty-three (23) East, M. D. B. & M., containing 160 acres more or less, same district, location, recordation, etc., as above.

Zee No. 8, the Northwest quarter (NW. $\frac{1}{4}$) of Section Fifteen (15), Township Thirty-one (31) South, Range Twenty-two (22) East, M. D. B. & M., containing 160 acres more or less, McKittrick District location, recordation, etc., same as above.

Zee No. 9, the Southeast quarter of Section Fifteen (15), Township Thirty-one (31) South, Range Twenty-two (22) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 10, the Southwest quarter (SW. $\frac{1}{4}$) of Section Fifteen (15), Township Thirty-one (31) —, Range Twenty-two (22) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 11, the Southeast quarter (SE. $\frac{1}{4}$) of Section Thirty-two (32), Township Twenty-seven (27)

South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, Devil's Den District, location, recordation, etc., same as above.

Zee No. 12, the Northeast quarter (NE. $\frac{1}{4}$) of Section Thirty-two (32), Township Twenty-seven (27) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 13, the Northwest quarter of Section Thirty-two (32), Township Twenty-seven (27) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 14, the Southwest quarter of Section Thirty-two (32), Township Twenty-seven (27) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 15, the Southeast quarter (SE. $\frac{1}{4}$) of Section Six (6), Township Twenty-six (27) South of Range Nineteen (19) East of M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 16, the Northwest quarter (NW. $\frac{1}{4}$) of Section Seven (7), Township Twenty-seven (27) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above. [232]

Zee No. 17, the Southeast quarter (SE. $\frac{1}{4}$) of Section Seven (7), Township Twenty-seven (27) South, Range Nineteen (19) East of M. D. B. & M., contain-

ing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 52, the South half (S. $\frac{1}{2}$) of the Northeast quarter (NE. $\frac{1}{4}$) of Section Two (2), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 80 acres, more or less, Temblor District, location, recordation, etc., same as above.

Zee No. 53, the Southeast quarter (SE. $\frac{1}{4}$) of Section Twenty-two (22), Township Twenty-nine (29) South of Range Twenty (20) East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 54, the Southwest quarter (SW. $\frac{1}{4}$) of Section Twenty-two (22), Township Twenty-nine (29) South of Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 55, the Northeast quarter of Section Twenty-two (22), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 56, the Southwest quarter (SW. $\frac{1}{4}$) of Section Fifteen (15), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 57, the Northwest quarter (NW. $\frac{1}{4}$) of Section Fifteen (15), Township Twenty-nine (29) South of Range Twenty (20) East, M. D. B. & M.,

containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 58, the Northeast quarter of Section Fifteen (15), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 59, the Southwest quarter of Section Eleven (11), Township Twenty-nine (29) South of Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., *more or less, district, location, recordation, etc., same as above.*

Zee No. 60, the Southeast quarter of Section Eleven (11), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres, more or less, district, location, etc., same as above.

Zee No. 61, the Northeast quarter (NE. $\frac{1}{4}$) of Section Eleven (11), Township Twenty-nine (29) South, Range Twenty [233] (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 62, the Northwest quarter (NW. $\frac{1}{4}$) of Section Eleven (11), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 63, the Southwest quarter (SW. $\frac{1}{4}$) of Section One (1), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing

160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 64, the Northwest quarter (NW. $\frac{1}{4}$) of Section One (1), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 65, the Northeast quarter of Section One (1), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 66, the Southwest quarter (SW. $\frac{1}{4}$) of Section Two (2), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 67, the South half of the South half of Section Three (3), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 68, the Southeast quarter (SE. $\frac{1}{4}$) of Section Four (4), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 69, the Southwest quarter (SW. $\frac{1}{4}$) of Section Four (4), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 70, the Northwest quarter (NW. $\frac{1}{4}$) of Section Four (4), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 71, the Northeast quarter (NE. $\frac{1}{4}$) of Section Four (4), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres [234] more or less, district, location, recordation, etc., same as above.

Zee No. 72, the Southwest quarter (SW. $\frac{1}{4}$) of Section Ten (10), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 73, the South half of the southeast quarter of Section Ten (10), Township Twenty-nine (29) South of Range Twenty (20) East, M. D. B. & M., containing 80 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 74, the South half of the Northwest quarter and the Northeast quarter of the Northwest quarter of Section Ten (10), Township Twenty-nine (29) South, Range Twenty (20) East, M. D. B. & M., containing 120 acres more or less, district, location, recordation, etc., same as above.

Zee No. 75, the Northeast quarter of Section Six (6), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, Devil's Den Dis., location, recordation, etc., same as above.

Zee No. 76, the Northeast quarter of Section

Five (5), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 77, the Northwest quarter of Section Four (4), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 78, the Northeast quarter (NE. $\frac{1}{4}$) of Section Nineteen (19), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 79, the Southwest quarter (SW. $\frac{1}{4}$) of Section Nineteen (19), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 80, the Northwest quarter (NW. $\frac{1}{4}$) of Section Twenty (20), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 81, the Southeast quarter (SE. $\frac{1}{4}$) of Section Twenty (20), Township Twenty-six (26) South, [235] Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 82, the Northwest quarter (NW. $\frac{1}{4}$) of Section Twenty-nine (29), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B.

& M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 83, the Northeast quarter of Section Twenty-nine (29), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 84, the Southwest quarter of Section Twenty-nine (29), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 85, the Southeast quarter (SE. $\frac{1}{4}$) of Section Twenty-nine (29), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 86, the Northwest quarter (NW. $\frac{1}{4}$) of Section Twenty-eight (28), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 87, the Northeast quarter (NE. $\frac{1}{4}$) of Section Twenty-eight (28), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 88, the Southwest quarter (SW. $\frac{1}{4}$) of Section Twenty-eight (28), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 89, the Southeast quarter (SE. $\frac{1}{4}$) of Section Twenty-eight (28), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 90, the Northwest quarter (NW. $\frac{1}{4}$) of Section Twenty-seven (27), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above. [236]

Zee No. 91, the Southwest quarter (SW. $\frac{1}{4}$) of Section Twenty-seven (27), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, etc., same as above.

Zee No. 92, the Northeast quarter of Section Thirty-two (32), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 93, the Southwest quarter (SW. $\frac{1}{4}$) of Section Thirty-two (32), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 94, the Southeast quarter (SE. $\frac{1}{4}$) of Section Thirty-two (32), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 95, the Northwest quarter (NW. $\frac{1}{4}$) of Section Thirty-two (32), Township Twenty-six (26)

South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 96, the Southwest quarter (SW. $\frac{1}{4}$) of Section Thirty-three (33), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 97, the Northeast quarter (NE. $\frac{1}{4}$) of Section Thirty-three (33), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 98, the Southeast quarter (SE. $\frac{1}{4}$) of Section Thirty-three (33), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 99, the Northwest quarter (NW. $\frac{1}{4}$) of Section Thirty-four (34), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 100, the Northeast quarter (NE. $\frac{1}{4}$) Section One (1), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above. [237]

Zee No. 101, the Southeast quarter (SE. $\frac{1}{4}$) Section One (1), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing

160 acres more or less, district, location, recordation, etc., same as above.

See No. 102, the Southwest quarter (SW. $\frac{1}{4}$) Section One (1), Township Twenty-seven (27) South, Range Eighteen — East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 103, Northwest quarter (NW. $\frac{1}{4}$) of Section One (1), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 104, the Northeast quarter of Section Two (2), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 105, the Southeast quarter (SE. $\frac{1}{4}$) Section Two (2), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 106, the Southwest quarter (SW. $\frac{1}{4}$) Section Two (2), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 107, the Northwest quarter (NW. $\frac{1}{4}$) Section Two (2), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 108, Northeast quarter (NE. $\frac{1}{4}$) Section

Three (3), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 109, the Southeast quarter (SE. $\frac{1}{4}$) Section Three (3), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 110, the Southwest quarter (SW. $\frac{1}{4}$) of Section Three (3), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 111, the Northwest quarter (NW. $\frac{1}{4}$) Section Three (3), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 112, Northeast quarter (NE. $\frac{1}{4}$) Section Four [238] (4), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 113, Southeast quarter (SE. $\frac{1}{4}$) Section Four (4), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 114, Southwest quarter (SW. $\frac{1}{4}$) Section Four (4), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160

acres more or less, district, location, recordation, etc., same as above.

Zee No. 115, Northwest quarter (NW. $\frac{1}{4}$) Section Four (4), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 116, Northeast quarter (NE. $\frac{1}{4}$) Section Five (5), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 117, Northwest quarter (NW. $\frac{1}{4}$) Section Five (5), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 118, Northwest quarter (NW. $\frac{1}{4}$) Section Eight (8), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 119, Northeast quarter (NE. $\frac{1}{4}$) Section Eight (8), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 120, Southwest quarter (SW. $\frac{1}{4}$) Section Eight (8), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 121, Southeast quarter (SE. $\frac{1}{4}$) Section Eight (8), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee — 122, Northeast quarter (NE. $\frac{1}{4}$) Section Nine (9), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above. [239]

Zee No. 123, Southeast quarter (SE. $\frac{1}{4}$) Section Nine (9), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 124, Northwest quarter (NW. $\frac{1}{4}$) Section Ten (10), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 125, Northeast quarter (NE. $\frac{1}{4}$) Section Ten (10), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 126, Southeast quarter (SE. $\frac{1}{4}$) Section Ten (10), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 127, Southwest quarter Section Ten (10), Township Twenty-seven (27) South, Range Eighteen

(18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 128, Northwest quarter (NW. $\frac{1}{4}$) of Section Eleven (11), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 129, Southwest quarter (SW. $\frac{1}{4}$) Section Eleven (11), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 130, Northeast quarter (NE. $\frac{1}{4}$) of Section Eleven (11), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 131, Southeast quarter (SE. $\frac{1}{4}$) of Section Eleven (11), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 132, Northwest quarter (NW. $\frac{1}{4}$) Section Twelve (12), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 133, Northeast quarter (NE. $\frac{1}{4}$) Section Twelve (12), Township Twenty-seven (27) South, Range [240] Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location,

recordation, etc., same as above.

Zee No. 134, Southeast quarter (SE. $\frac{1}{4}$) Section Twelve (12), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 135, Southwest quarter (SW. $\frac{1}{4}$) Section Twelve (12), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 136, Northwest quarter (NW. $\frac{1}{4}$) Section Fourteen (14), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 137, Southeast quarter (SE. $\frac{1}{4}$) Section Fifteen (15), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 138, Southwest quarter (SW. $\frac{1}{4}$) Section Fifteen (15), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 139, Northeast quarter (NE. $\frac{1}{4}$) of Section Fifteen (15), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 140, Northwest (NW. $\frac{1}{4}$) quarter Section

Fifteen (15), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 141, Southeast quarter (SE. $\frac{1}{4}$) Section Seventeen (17), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 142, Northeast quarter (NE. $\frac{1}{4}$) Section Seventeen (17), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above. [241]

Zee No. 143, Northwest quarter (NW. $\frac{1}{4}$) Section Seventeen (17), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 144, Southwest quarter (SW. $\frac{1}{4}$) Section Seventeen (17), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 145, Northeast quarter Section Twenty-nine (29), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location recordation, etc., same as above.

Zee No. 146, Northwest quarter Section Twenty-eight (28), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing

160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 147, Northwest quarter (NW. $\frac{1}{4}$) Section Twenty-seven (27), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 148, Northeast quarter (NE. $\frac{1}{4}$) Section Twenty-seven (27), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 149, Southwest quarter (SW. $\frac{1}{4}$) of Section Twenty-seven (27), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 150, Southeast quarter of Section Twenty-seven (27), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 151, Northwest quarter (NW. $\frac{1}{4}$) Section Twenty-two (22), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 152, Southeast quarter (SE. $\frac{1}{4}$) Section Twenty-two (22), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above. [242]

Zee No. 153, Northwest quarter (NW. $\frac{1}{4}$) Section Twenty-six (26), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., district, location, recordation, etc., same as above and containing 160 acres of land, more or less.

Zee No. 154, Southwest quarter (SW. $\frac{1}{4}$) Section Twenty-six (26), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 155, Northeast quarter (NE. quarter) Section Twenty-six (26), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 156, Southeast quarter Section Twenty-six (26), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 157, Northwest quarter (NW. $\frac{1}{4}$) of Section Twenty-three (23), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 158, Southwest quarter (SW. $\frac{1}{4}$) of Section Twenty-three (23), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 159, Northeast quarter (NE. $\frac{1}{4}$) of Section Twenty-three (23), Township Twenty-seven

(27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 160, Southeast quarter (SE. $\frac{1}{4}$) Section Twenty-three (23), Township Twenty-seven (27) South, Range Eighteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 161, Northwest quarter (NW. $\frac{1}{4}$) Section Twenty-four (24), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 162, Southwest quarter (SW. $\frac{1}{4}$) Section Twenty-four (24), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above. [243]

Zee No. 163, Northeast quarter (NE. $\frac{1}{4}$) Section Twenty-four (24), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 164, the Southeast quarter (SE. $\frac{1}{4}$) Section Twenty-four (24), Township Twenty-seven (27) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 165, Northwest quarter of Section Six (6), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more

or less, district, location, recordation, etc., same as above.

Zee No. 166, Northeast quarter of Section Six (6), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 167, Southwest quarter (SW. $\frac{1}{4}$) Section Six (6), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 168, Southeast quarter (SE. $\frac{1}{4}$) Section Six (6), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 169, Northwest quarter (NW. $\frac{1}{4}$) Section Five (5), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres, more or less, district location, recordation, etc., same as above.

Zee No. 170, Northeast quarter (NE. $\frac{1}{4}$) Section Five (5), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 171, Southwest quarter (SW. $\frac{1}{4}$) Section Five (5), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 172, Southeast quarter (SE. $\frac{1}{4}$) Section Five (5), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres, more or less, district location, recordation, etc., same as above.

Zee No. 173, Northwest quarter (NW. $\frac{1}{4}$) Section Four, [244] Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 174, Southwest quarter (SW. $\frac{1}{4}$) Section Four (4), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 175, West half of the East half of Section Four (4), Township Twenty-eight South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 176, Northwest quarter (NW. $\frac{1}{4}$) Section Eight (8), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 177, Northeast quarter of Section Eight (8), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 178, Southwest quarter (SW. $\frac{1}{4}$) Section Eight (8), Township Twenty-eight (28) South,

Range Nineteen (19) East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 179, Southeast quarter (SE. $\frac{1}{4}$) Section Eight (8), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 180, West half of West half of Section Nine (9), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 181, South half of the Southeast quarter and the Northeast quarter of the Southeast quarter and the Southeast quarter of the Northeast quarter of Section Nine (9), Township Twenty-eight (28), Range Nineteen (19) East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 182, Southwest quarter (SW. $\frac{1}{4}$) Section Three (3), Township Twenty-eight South, Range Nineteen East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above. [245]

Zee No. 183, North half of the Northeast quarter and the Northeast quarter of the Northwest quarter of Section Ten (10), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 120 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 184, Southwest quarter (SW. $\frac{1}{4}$) Section

Eleven (11), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 185, Southeast quarter (SE. $\frac{1}{4}$) Section Eleven (11), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 186, Northwest quarter (NW. $\frac{1}{4}$) Section Fifteen (15), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 187, Northeast quarter (NE. $\frac{1}{4}$) Section Fifteen (15), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 188, Southwest quarter (SW. $\frac{1}{4}$) Section Fifteen (15), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 189, Southeast quarter (SE. $\frac{1}{4}$) Section Fifteen (15), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 190, West half of the Northwest quarter and the Northeast quarter of the Northwest quarter of Section Fourteen (14), Township Twenty-eight

(28) South, Range Nineteen (19) East, M. D. B. & M., containing 120 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 191, Northeast quarter (NE. $\frac{1}{4}$) of Northeast quarter (NE. $\frac{1}{4}$) of Section Fourteen (14), Township Twenty-eight (28) South, Range Nineteen East, M. D. B. & M., containing 40 acres more or less, district, location, recordation, etc., same as above.

Zee No. 192, the Northwest quarter of Section Thirteen (13), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres, [246] more or less, district, location, recordation, etc., same as above.

Zee No. 193, the Northeast quarter of Section Thirteen (13), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 194, the Southwest quarter of Section Thirteen (13), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 195, the Southeast quarter of Section Thirteen (13), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 196, South half (S. $\frac{1}{2}$) of North half (N. $\frac{1}{2}$) of Section Twenty-two (22), Township Twenty-eight (28) South Range Nineteen East, M. D. B. & M., containing 160 acres more or less, district,

location, recordation, etc., same as above.

Zee No. 197, Southwest quarter (SW. $\frac{1}{4}$) of Section Twenty-two (22), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 198, Southeast quarter (SE. $\frac{1}{4}$) of Section Twenty-two (22), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 199, Northwest quarter of Section Twenty-three (23), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 200, Northeast quarter (NE. $\frac{1}{4}$) of Section Twenty-three (23), Township Twenty-eight South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 201, Southwest quarter (SW. $\frac{1}{4}$) of Section Twenty-three (23), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres, more or less, —

Zee No. 202, Southeast quarter (SE. $\frac{1}{4}$) Section Twenty-three (23), Township Twenty-eight South, [247] Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 203, Northwest quarter of Section Twenty-six (26), Township Twenty-eight (28)

South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 204, South half of the Northeast quarter and the Northwest quarter of the Northeast quarter, Section Twenty-six (26), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 205, Southwest quarter (SW. $\frac{1}{4}$) of Section Twenty-six (26), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 206, Southeast quarter of Section Twenty-six (26), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 207, Southwest quarter (SW. $\frac{1}{4}$) of Section Twenty-five, Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 208, Southwest quarter (SW. $\frac{1}{4}$) of Section Ten (10), Township Twenty-eight (28) South, Range Nineteen (19) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 209, North half of the Northwest quarter of Section Thirty-four (34), Township Twenty-six (26) South, Range Seventeen East, M. D. B. & M.,

containing 80 acres more or less, district, location, recordation, etc., same as above.

Zee No. 210, Northeast quarter of Section Thirty-four (34), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 211, Southeast quarter of Section Thirty-four (34), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 212, Northwest quarter of Section Thirty-five [248] (35), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 213, Southwest quarter of Section Thirty-five (35), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 214, Northeast quarter (NE. $\frac{1}{4}$) of Section Thirty-five (35), Township Twenty-six (26) Range, Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 215, Southeast quarter of Section Thirty-five (35), Township Twenty-six (26) South, Range Eighteen (18) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 216, Northwest quarter (NW. $\frac{1}{4}$) of Section Thirty (30), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, Temblor District, location, recordation, etc., same as above.

Zee No. 217, Southwest quarter (SW. $\frac{1}{4}$) of Section Thirty (30), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 218, Northwest quarter (NW. $\frac{1}{4}$) of Section Thirty-one (31) Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, recordation, etc., same as above.

Zee No. 219, Southwest quarter of Section Thirty-one (31), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 220, Northeast quarter (NE. $\frac{1}{4}$) of Section Thirty-one (31), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 221, Northeast quarter (NE. $\frac{1}{4}$) of Section Thirty-two (32), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above. [249]

Zee No. 222, Northwest quarter (NW. $\frac{1}{4}$) of Section Thirty-three (33), Township Twenty-eight (28)

South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 223, Southwest quarter (SW. $\frac{1}{4}$) of Section Thirty-three (33), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 224, Northeast quarter of Section Thirty-three (33), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less.

Zee No. 225, Southeast quarter (SE. $\frac{1}{4}$) of Section Thirty-three (33), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres, more or less, district, location, recordation, etc., same as above.

Zee No. 226, Southwest quarter of Section Thirty-four (34), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 227, West half of Southeast quarter of Section Thirty-four (34), Township Twenty-eight (28) South, Range Twenty (20) East, M. D. B. & M., containing 80 acres more or less, district, location, recordation, etc., same as above.

Zee No. 235, North half of the Northeast quarter and the East half of the Northwest quarter of Section Twenty-one (21), Township Twenty-six (26) South, Range Seventeen East, M. D. B. & M., containing 160 acres more or less, Devils Den District, loca-

tion, recordation, etc., same as above.

Zee No. 238, North half of the Northeast quarter of Section Twenty-nine (29), Township Twenty-six (26) South, Range Seventeen (17) East, M. D. B. & M., containing 80 acres more or less, district, location, recordation, etc., same as above.

Zee No. 239, Southeast quarter (SE. $\frac{1}{4}$) of Section Twenty-two (22), Township Twenty-six (26) South, Range Seventeen (17) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 240, Northeast quarter (NE. $\frac{1}{4}$) of Section Twenty-eight (28), Township Twenty-six (26) South, Range Seventeen (17) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above. [250]

Zee No. 241, Southeast quarter (SE. $\frac{1}{4}$) Section Twenty-eight (28), Township Twenty-six (26) South, Range Seventeen (17) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 242, Northwest quarter (NW. $\frac{1}{4}$) Section Twenty-seven (27), Township Twenty-six (26) South, Range Seventeen (17) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 243, Southwest quarter (SW. $\frac{1}{4}$) of Section Twenty-seven (27), Township Twenty-six (26) South, Range Seventeen East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 244, Northeast quarter (NE. $\frac{1}{4}$) of Sec-

tion Thirty-three (33), Township Twenty-six (26) South, Range Seventeen (17) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 250, Southwest quarter (SW. $\frac{1}{4}$) of Section Four (4), Township Thirty-one (31) South, Range Twenty-two (22) East, Mount Diablo Base and M., containing 160 acres more or less, McKitt-
rick District, location, recordation, etc., same as above.

Zee No. 251, North half of the South half of Section Ten (10), Township Thirty (30) South, Range Twenty-one (21) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above.

Zee No. 252, Lots one (1), two (2), and three (3), and the Southwest quarter (SW. $\frac{1}{4}$) of the Southwest quarter (SW. $\frac{1}{4}$) of Section Ten (10), Township Thirty (30) South, Range Twenty-one (21) East, Mount Diablo Base and Meridian, district, location, etc., same as above.

Zee No. 253, West half (W. $\frac{1}{2}$) of the Southwest quarter (SW. $\frac{1}{4}$) Section Thirty-one (31), Township Twenty-nine (29) South, Range Twenty-one (21) E. M. D. B. & M., district, location, etc., same as above.

Zee No. 254, Lots Six (6), Seven (7), and Eight (8), in Section Four (4), Township Thirty (30) South, Range Twenty-one (21) East, M. D. B. M., district location, recordation, etc., same as above.

Zee No. 255, Lots Thirteen (13), Fourteen (14), and Fifteen (15), in Section Two (2), Township

Thirty (30) South, Range Twenty-one (21) East, M. D. B. & M., containing 160 acres more or less, district, location, recordation, etc., same as above; each and all of said location notices recorded January 2, 1908, in [251] Vol. 71 of Miscellaneous Records of Kern County, California; together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz rock and earth therein as also all deposits of oil or petroleum or oil bearing rock; and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed; also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part of, in or to the said premises and every part and parcel thereto with the appurtenances.

To have and to hold all and singular the said premises together with the appurtenances and privileges thereunto incident unto the said parties of the second part.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals as trustees, the day and year herein first above written.

FRANK R. STRONG, (Seal)
Trustee.

M. Z. ELLIOTT, (Seal)
Trustee.

certificate first above written.

[Seal] H. B. PHELAN,
Notary Public in and for the County of Kern, State
of California.

Recorded at request of Roy Jones, May 27, 1909,
at 59 min. past 4 P. M., in Book 217, of Deeds, page
83, Kern County Records.

CHAS. A. LEE,
Recorder.

Mr. HALL.—The Government offers in evidence the papers which have been marked Plaintiff's Exhibit No. 6, which purports to be a certified copy of a lease, dated September 27, 1909, between the British-American Oil Company and George W. Dickinson, of Los Angeles, which is as follows, omitting certificate of Recorder and filing marks:

Plaintiff's Exhibit No. 6.

“THIS AGREEMENT made this 27 day of September, 1909, between British-American Oil Company, a California corporation, first party and George W. Dickinson of Los Angeles, second party, WITNESSETH:—

That WHEREAS, the first party claims to be the owner and holder of possessory title under and by virtue of certain mesne conveyances, from the mineral locations thereof, of all that certain tracts of land situate in Kern County, California, consisting of the Northwest quarter of Section 15, Township 31 South, Range 22 East, Mount Diablo Base and Meridian.

And WHEREAS, second party is desirous of securing lease of above-described lands from first party with option of purchasing the same if he so elects:

Now Therefore, in consideration of one dollar (\$1.00) to it in hand paid by second party, receipt wherof is hereby acknowledged, the first party hereby grants, leases, demises and lets to the second party and to his heirs and assigns all and singular the foregoing and above-described tract of land for a period of twenty years from the date hereof and such further extension as is herein provided for, together with all [253] and all kinds of crude petroleum, asphaltum, maltha, tar, gas, bitumen and all other kinds of hydro-carbon substances and all other minerals of every kind and character whatsoever.

Together also with the possession of said property and the right to enter thereon by any and all means and appliances *and* thereon to erect, operate and maintain any and all tanks, rigs, derricks, boilers, engines and jacks, pumping plants, pipe lines, telephone lines, machine-shops, warehouses, offices, boarding-houses, and any and all other buildings and structures of whatsoever kind or character deemed desirable by second party for use thereon.

Together also with the right to drill, bore and mine for, secure and save, take, sever and remove from, market and sell and otherwise dispose of all and singular said crude petroleum oil and other hydro-carbons, gypsum and all other minerals of whatsoever character contained in and under said property.

Said party agrees to forthwith take steps necessary for the performance of the annual assessment work required on said mining claim by the laws and customs and regulations of the district and of the United States for the preservation of said mining claim and to make all necessary affidavits and proofs *and* labor filing the same with the proper officials and upon discovery of minerals in sufficient quantity to enable the acquiring of United States Mineral Patent to said property, second party shall forthwith at his own cost and expense take all necessary steps to secure and obtain such United States Mineral Patent, the same to be for the benefit of and in the name of the first party whenever a patent shall have been secured to said property or whenever oil or other minerals shall have been found on said property in paying quantities, the said land from such time for the balance of the term thereof shall be held by the second party subject to all the terms of this lease. Second party, his heirs or assigns, shall have the right to purchase any portion of said property, not less than forty (40) acres at any time on or before five years from the date hereof, for and at the price of \$250.00 per acre, and upon such payment the first party shall execute and deliver to second party good and sufficient deed for the conveyance of all title which first party now has or which it or its successors in interest may at any time hereafter acquire to said property. The second party shall have the right to purchase any portion of said land at one time, and other portions

at other times, within the time above limited for the property thereof.

Second party shall commence the drilling of a well on said property for oil within one year from the date hereof, and thereafter shall prosecute said work with reasonable diligence to completion of such well on abandonment thereof; delays occasioned by accidents, elements or other causes, [254] over which second party has no control excepted, second party shall have the right from time to time to drill as many wells on said property as he shall deem best.

In case oil is found in any of said wells in paying quantities and second party has producing wells on said property at the termination of this lease, he shall have the right to and first party hereby grants him the right to have the period of this lease extended for a period of twenty years from the expiration of the term first above mentioned, with all of his rights hereunder, the same as herein stated.

The second party shall pay first party as rent or royalty on the tenth day of each and every month the equal one-tenth of the net amount of all oil produced or secured and saved from said property during the preceding calendar month, said oil to be delivered to and received by first party at the storage tank of second party on the lease. Second party will furnish first party free storage for one month royalty oil. First party shall receive its royalty oil promptly on or before the tenth of each month. All wells shall be drilled in a thoroughly workmanlike manner and water encountered in drilling shall be cased off by second party. First party shall pay

taxes on the land, second party shall pay taxes on the improvements.

A well pumping as much as ten barrels of oil during twenty-four hours continuous pumping shall be deemed a well in paying quantities. But second party shall have the right to pump any and all wells drilled on said property regardless of the amount of the production.

This agreement shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of the respective parties hereto.

Second party shall have free use of all gas and oil required for fuel and shall have all water developed on the property.

Witness the hands and seals of the parties hereunto the day and year first above written.

BRITISH-AMERICAN OIL COMPANY,

By M. Z. ELLIOTT,

Its President,

(Seal)

By FRANK R. STRONG,

Its Secretary.

GEORGE W. DICKINSON.

State of California,
County of Los Angeles,—ss.

On this 4th day of August, in the year one thousand nine hundred and ten before me, Florence E. Lea, a Notary Public, in and for said County of Los Angeles, State of California, residing therein, duly commissioned and qualified personally appeared M. Z. Elliott, known to me as to be the President of the British-American Oil Company, the

[255] corporation that executed the within instrument known to me to be the person who executed the within instrument, on behalf of the corporation therein named and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal and affixed my official seal at said county the day and year in this Certificate first above written.

[Seal] FLORENCE E. LEA,
Notary Public, in and for the County of Los Angeles, State of California.

My commission expires Oct. 14, 1913.

Los Angeles, Cal.

For a valuable consideration to me in hand paid, receipt of which is hereby acknowledged, I hereby transfer, set over and assign all my right, title and interest in and to the within lease to the North Midway Oil Company.

GEORGE W. DICKINSON.

Recorded at request of M. Z. Elliott, Sep. 12, 1910, at 50 Min. past 8 A. M., in Book 23 of Leases, page 38 of Kern County Records.

CHAS. A. LEE,
Recorder.

Endorsed on the margin as follows:

“Full assignment of within lease to North Midway Oil Co.

See — page 41 of this Book.

CHAS. A. LEE,
County Recorder,
By R. C., Deputy,
Deputy.”

The COURT.—I didn't get the names of the officers of the oil company.

Mr. HALL.—M. Z. Elliott was president, and Frank R. Strong secretary of the British-American Oil Company.

The COURT.—And those are the same gentlemen who were trustees under the agreement of March 4th.

Mr. HALL.—The same gentlemen who were trustees under the agreement, and who were locators in the making of the location.

Mr. HALL.—The Government offers and reads in evidence the [256] exhibit which has been marked Plaintiff's Exhibit No. 7, a resolution of the Board of Directors of the North Midway Oil Company as follows:

Plaintiff's Exhibit No. 7.

**“RESOLUTION OF BOARD OF DIRECTORS
OF NORTH MIDWAY OIL COMPANY.**

On motion duly seconded and unanimously adopted the following resolution was adopted.

‘Whereas, the Secretary presented to the Board of Directors a copy of amended lease between North Midway Oil Company, as first party and Joseph McDonell of Santa Maria, California, as second party, covering the South half of the Northwest quarter of Section Fifteen, Township 31 South Range 22, East, M. D. B. & M., in Kern County, California, to be substituted for the existing lease to Mr. McDonell and

WHEREAS, this company is willing to have the

original lease cancelled and the modified lease in the form submitted by the Secretary, executed in lieu thereof.

Now Therefore, by the resolution that the President and Secretary of this company be, and they are hereby authorized and instructed for and on behalf of this company in its name under its seal, and as its act and deed, to execute said modified lease and deliver the same to Mr. McDonell upon his execution thereof and cancellation of the old lease heretofore executed between this Company and Mr. McDonell and covering the same property.'

I hereby certify that the foregoing is a full, true and correct copy of a resolution of the Board of Directors of the North Midway Oil Company, adopted at a special meeting of said Board, at which all of the members were present, held at three o'clock P. M. on Monday November 7th, 1910, and that said resolution was adopted by the unanimous vote of said Board.

That the foregoing has been recorded in the minutes of said meeting and is now in full force and effect; that the lease to which this certificate is attached is the lease in above resolution referred to.

[Seal]

L. W. ANDREWS,

President of North Midway Oil Company.

This agreement made this 20th day of November, 1909, between North Midway Oil Company, a corporation, first party and Joseph McDonnell of Santa Maria, California, second party.

WITNESSETH:—That Whereas, first party holds a lease from British American Oil Company, cover-

ing the NW. $\frac{1}{4}$ of Section 15, township 31 south, range 22 east, M. D. B. & M., and

Whereas, second party desires to secure sublease of [257] the S. $\frac{1}{2}$ of above described property from first party.

Now, Therefore, in consideration of the rents or royalties to be paid to first party by second party and agreements herein contained to be kept and performed by second party, the first party hereby subleases and sublets unto second party, all the S. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of section 15, township 31 south, range 22 east, M. D. B. & M., in Kern County, California, for the period of 20 years from the 27th day of September, 1909, together with the right to operate, mine, dig, excavate, tunnel, drill for and otherwise develop, collect and obtain all kinds of crude petroleum oil, asphaltum, tar, gas, and other hydro-carbon substances in, upon and under said tract of land, together also with the right to take, sever, remove, market and dispose of all and singular said oil and other substances (subject to the payment of the royalty hereinafter provided) out of, from and away from said tract of land, together also with the right of enter upon said property with any and all proper means and appliances and thereon to erect, operate and maintain any and all tanks, rigs, derricks, boilers, engines, jacks, pipe-lines and other buildings and structures necessary or desirable for use by said second party in connection with its operations for the discovery and securing of oil from said premises.

Second party agrees and it is a condition hereof, that he shall take possession of said premises, on the date hereof, and that from and after the day hereof he shall and will at his own expense take all requisite steps and proceedings to secure and maintain the possession of said property at all times. It is further a condition hereof and second party agrees that he shall and will within five days from date hereof, commence work on said premises preparatory to drilling and operating for oil thereon and to that end that he will forthwith within five days from the date hereof, build a house on said premises and forthwith thereafter, and as *as* soon as possible, secure all necessary timbers, materials, tools, implements, rigs and equipment for erection of derrick on said premises and for drilling for oil thereon and as soon as the lumber therefor can be laid on the ground he will commence the building of derrick and thereafter with diligence will prosecute the construction of the derrick and drilling rig and thereafter will prosecute the work of drilling a well for oil on said premises with diligence to completion thereof.

Second party further agrees that in any event he shall and will prior to the 25th day of December, 1909, perform labor on said property, in the development thereof to the value of at least \$200.00 and that he shall and will at his own cost and expense make all necessary affidavits and proofs of labor covering all of said Northwest quarter of Section 15 (in the name of British American Oil Company), filing the same with the proper officials during the year 1909, and that he shall and will perform [258] a simi-

lar amount of labor and file similar affidavits each succeeding year thereafter until patents have been obtained, on said property.

Second party further agrees upon the development of minerals in sufficient quantity to enable the acquirements of a United States mineral patent, he shall and will at his own cost and expense, take all necessary steps to secure United States mineral patent on said entire Northwest one-quarter of said Section 15, the same to be for the benefit of both parties hereto and the British-American Oil Company and shall be in the name of said British-American Oil Company. First party to repay to second party amount per acre required to be paid to secure patent on N. $\frac{1}{2}$ of said NW. $\frac{1}{4}$ of said Sec. 15, whenever a patent shall have been secured for said property or whenever oil or said minerals shall have been found upon said property in paying quantities said S. $\frac{1}{2}$ of said NW. $\frac{1}{4}$ of section 15, hereinabove described from such time for the balance of said term, shall be subject to all terms of this lease.

Second party agrees that he shall and will prosecute the work of drilling said well with diligence until the same shall have been drilled to a depth of at least 2000 feet unless oil be found in said well in paying quantities at a lesser depth.

Second party further agrees and it is a condition hereof that from the time he commences drilling operations on said property (which shall not be later than December 25, 1909) he shall and will thereafter actively and diligently prosecute the work of developing said property, and to that end he shall and

will drill to completion at least one well on said property during each and every year of the term hereof. It being understood, however, that in case he is unable to drill one well in any year by the diligent operations of one string of drilling tools during said entire year, that, notwithstanding, his obligation in that behalf shall be satisfied, in case during each of said years he shall continuously and diligently operate for oil with one string of drilling tools during said year or years whenever second party shall have found oil in any well in paying quantities, the same shall be deemed to be and shall be counted as a completed well for all the purposes of this agreement and whenever second party shall have sunk a well to the depth of 2000 feet although oil be not discovered in paying quantities the same shall be deemed to be counted as a completed well for the purpose of this agreement. A well producing 10 barrels of oil per day for each of 30 consecutive days shall be deemed to be a well which produces oil in paying quantities. It is understood, however, that said second party shall have the right to drill a well to such depth greater than 2000 feet, as he desires.

It is further agreed that from and after the completion of each well in which oil shall have been found in quantities sufficient to pay to pump, second party shall pump or [259] otherwise secure and save oil therefrom with diligence at all times as long as such well produces oil in paying quantities sufficient to pay to pump or otherwise secure and save. Second party shall have the right to pump any and all producing wells as long as the same produce oil

in paying quantities and such right shall not be terminated by the expiration of said term of twenty years.

Second party shall pay to first party and first party shall receive as rent or royalty *for* second party the equal $\frac{1}{8}$ of all oil produced or secured and saved from said property at any and all times during the term of this lease, and on the first day of each and every month second party shall pay and deliver to first party as said rent or royalty the equal one-eighth of the total amount of oil produced or otherwise secured and saved, from said property during the preceding calendar month after deduction has been made of oil used for fuel on said property. Said oil to be delivered to and be received by first party at the storage tank of second party on the lease, or to be delivered into tanks of first party on the lease or into the pipe-line as elected by first party and in case of delivery into the pipe-line or into tanks of first party, second party shall at its own cost and expense, pump said oil into said tanks of first party or into the receiving station of the Pipe Line Company, either from pipe-line of second party (for use of which second party will make no charge) or if second party has no pipe-line connections with the pipe-line or receiving station of the Pipe Line Company, then from pipe-line which may be constructed by first party or for the use of which the first party may have arranged, first party reserving the right to erect storage tanks at any convenient location on said leased premises which will not interfere with operations or structures of second party already

erected, or commenced. Second party shall furnish to first party free of charge storage for one month's royalty due first party after the day the same is payable hereunder.

First party shall have the right to sell its royalty oil in connection with the sale by second party of any of its oil, and to that end second party shall advise first party of any and all contract which he has the opportunity to make for the sale of his oil and thereupon first party shall have the right to have its oil included in such contract, and if so included second party shall on or before the 20th day of each month, make settlement for and pay first party in cash for all of its royalty oil produced during the preceding calendar month for which payment has been made.

All wells shall be drilled in a thoroughly workman-like manner and all water encountered in drilling shall be cased off by second party. Second party shall pay all taxes which may be levied on any and all property of any character placed upon said premises by it, together with seven-eighths of all taxes that may be at any time levied on the property. [260]

It is further agreed that if second party fails to drill at least one well for each year or to operate on said property constantly and diligently with one string of tools as herein provided or shall fail to pump producing wells at all times with diligence as long as the same produce oil in quantities sufficient to secure and save or in case second party shall fail to keep and perform any of his covenants herein contained, then or in either of said events, second party shall forfeit all his rights hereunder and at the option

of first party this lease shall absolutely cease and terminate, providing, however, that second party shall not be in default for failure to promptly perform the work herein provided, during such times as he may be delayed and prevented therefrom by acts of the elements, accidents and other causes entirely beyond control, provided further that in case he shall have drilled and completed one or more wells but thereafter fails to drill additional wells as herein provided, but otherwise keeps and performs the covenants and agreements herein contained on his part, that said forfeiture shall apply only to the right to drill additional wells and that during the remainder of said term, and as long as he shall comply with all other conditions of this lease he shall have the right to continue pumping wells already drilled, and that the party of the first part agrees not to drill on said demises premises nearer than 300 feet to any well drilled and operated by second party.

In case at any time the price at which oil can be sold at the wells drops to less than twenty-five cents per barrel, the obligation in this lease contained on the part of second party to pump wells already drilled shall be suspended during such time, but not longer, as the price which can be secured for oil, at the wells on said territory, remains less than twenty-five cents per barrel. This provision shall not, however in any way affect the obligation of said second party to drill and operate as in this lease provided.

First party shall have access to the premises and all wells and operation thereon and to the gauge and storage tanks of second party at all times for the

purpose of measuring and gauging the oil and securing the general information concerning the same. Second party shall keep full, correct and accurate account of all transactions respecting the productions and storage of oil and receiving, transporting and sale of oil in all cases where the royalty oil is sold with oil of second party, all of which accounts shall at all times during office hours be open to inspection by first party or its representative.

At the termination of the right of the second party hereunder either in whole or in part, second party shall have the right to remove from said premises, any and all property placed thereon by him excepting that sufficient casing to properly and efficiently shut off all water from entering all sand, shall be left in all wells and the [261] balance of casing in all wells shall be sold to party of the first part at its option for 75% of its market value.

It is further agreed that if the party of the second part shall fully and faithfully perform on his part all the terms, conditions and provisions of this lease, in the manner and at the times herein provided, he shall have the right at any time on or before December 1st, 1910, to purchase from first party all its right, title and interest in the property hereby leased to second party upon payment to first party of the sum of \$500.00 per acre in gold coin of the United States payable as follows:—\$5,000.00 thereof at the time of the exercise of the said option at any time on or before December 1st, 1910, and \$15,000.00 thereof on or before March 1st, 1911, and the remaining \$20,000.00 on or before June 1st, 1911, it being

expressly understood that this option applies to said S. $\frac{1}{2}$ of said NW. $\frac{1}{4}$ of said Section 15, as a whole and not as a part thereof, also that royalty shall be paid at all times until final payment is made.

It is further agreed that nothing herein contained shall be construed as abandonment of any portion of said Northwest quarter of said Section Fifteen, nor as a segregation of said claim, and such proceedings shall be taken that application for patent shall be made covering said Northwest quarter as *a* entirety and proper steps shall subsequently be taken for conveyance to respective parties of the portions of said Northwest quarter of said Section Fifteen, to which they shall be respectively entitled on issuance of patent that the time within which this option to purchase can be exercised is of the essence of this contract.

That the time for the commencement of work hereunder the performance of assessment work and filing affidavits as herein provided, the constant and diligence operations on said property with the respective equipment as herein provided, and the covenants herein contained for payment of royalty, and the covenant to pump and otherwise operate wells and work with diligence as herein provided, are and each thereof is of the essence of this contract.

It is further agreed that this lease shall not be assigned by second party without the written consent of first party having been first secured.

It is agreed that second party may sublet forty acres of said demised premises to a corporation to be known as the Dominion Oil Company, and also

that second party may transfer an undivided one-sixth interest in and to and under this lease, so far as it effects the remaining forty acres of said demised premises to each W. O. Maxwell, T. R. Finley, A. R. Jones, A. E. Bell and F. E. Bedichek, and said parties may assign their interest hereunder to Maxwell Oil Company. [262]

IN WITNESS WHEREOF, on the day and year first above written, first party has caused its corporate name to be hereunder subscribed and this corporate seal affixed and second party has hereunto set his hand and seal.

[Seal] NORTH MIDWAY OIL COMPANY,
By LEWIS W. ANDREWS,
President.

By ROY JONES,
Secretary.

JOS. McDONNEL. (Seal)

State of California,
County of Santa Barbara,—ss.

On this 20th day of November, in the year one thousand nine hundred and ten, before me T. R. Finley, a Notary Public in and for the county of Santa Barbara, personally appeared Joseph McDonell, known to me to be the person whose name is subscribed to the within instrument and he duly acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the county of Santa Barbara, the day and year in

this certificate first above written.

[Seal] T. R. FINLEY,
Notary Public in and for the County of Santa Bar-
bara, State of California.

State of California,
County of Los Angeles,—ss.

On this 4th day of February, in the year nineteen hundred and eleven before me M. Relyea, a Notary Public in and for the said County of Los Angeles, State of California, residing therein duly commissioned and sworn personally appeared _____, known to me to be the President and Roy Jones, known to me to be the Secretary of North Midway Oil Company the corporation which executed the within and annexed instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal] M. RELYEA,
Notary Public in and for said Los Angeles County,
State of California.

My commission expires January 28, 1911.

State of California,
County of Los Angeles,—ss.

On this 25th day of March, in the year nineteen hundred and eleven before me, Olive C. Gebauer, a Notary [263] Public in and for said County of Los Angeles, State of California, residing therein duly commissioned and sworn, personally appeared Lewis W. Andrews, known to me to be the person

whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this day and year in this Certificate first above written.

[Seal] OLIVE C. GEBAUER,
Notary Public in and for said County of Los Angeles, State of California.

Recorded at request of A. F. L. Bell, Apr. 1, 1911, at 40 min. past 11 A. M. in Book 23 of Leases, page 458, Kern County Records.

CHAS. A. LEE,
Recorder.

Endorsed on the margin as follows, to wit:

‘Partial assignment of within lease as to N² of S² of NW⁴, Sec. 15, T. 31 S. R. 22 E. to T. R. Finley et als., See Book 7, page 363 of Assignments.’

CHAS. A. LEE,
County Recorder.”

Mr. HALL.—Your Honor will observe it was under this lease that the assignment was eventually made to the Dominion Oil Company, which now occupies the south 40 acres of the tract.

Mr. WEIL.—May it be noted, or will you stipulate that the Bankline became the successor of Maxwell on the north 40?

Mr. HALL.—Yes, I think that is correct. These parties here, who were given the right to have a lease on the north 40, assigned to the Maxwell Company, and I think it went from there to the Bankline.

Mr. WEIL.—Yes. And as to the north half of the quarter, as well, that lease came originally from the North Midway Oil Company through several other mesne conveyances, and finally vested in Barneson and Walker.

Mr. HALL.—That I don't know, about the record, but I take your statement for that.

Mr. WEIL.—There is a bad record there. It went to Elliott, [264] and he died, and it was afterwards in a probate sale, and it was afterwards vested in Barneson and Walker, and if we stipulate to that—

Mr. HALL.—You understand that chain of title better than we do and whatever Mr. Weil says about it I am willing to stipulate.

Mr. WEIL.—Yes, sir. [265]

Testimony of Roy R. Jones, for Plaintiff.

ROY R. JONES, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

I am secretary of the British-American Oil Company. I have in my possession in the city of Los Angeles the records of the British-American Oil Company. In response to your question to produce at 2 o'clock this afternoon the minute-books showing the minutes of all meetings of the stockholders and the board of directors of the British-American Oil Company, and also the stock books showing who then and who are now stockholders of that corporation from the time of its incorporation in 1907 until the

(Testimony of Roy R. Jones.)

present time, I will say that I am not sure that I have the books from the time of the incorporation, but I have them from the time the new stock books were issued. I am not sure I have the old stock books. There was a reduction in the amount of the capital stock. I will bring you all the books I have. I think we have some of the original location notices that are involved in the location of these various "Zee" placer mining claims, but I turned over those things to the attorneys and I am not sure what we have. I will produce what I have this afternoon. I will produce all others that I have where these twenty-one parties were locators. We have got some of them. I don't think we have all of them. I will produce what I have.

Mr. HALL.—Mr. Weil, may I ask you whether or not your clients or any of the defendants in this case have the four reports of the original Dominion well No. 1?

Mr. WEIL.—All of the records of the Dominion Oil Company [266] were destroyed by the fire which took place in 1912 in McKittrick. We have nothing before 1912.

Mr. HALL.—Have you any drilling reports whatever of well No. 1?

Mr. WEIL.—No; nothing.

Testimony of William G. Van Slyke, for Plaintiff.

WILLIAM G. VAN SLYKE, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examintion.

(By Mr. HALL.)

My name is William G. Van Slyke. I reside in Los Angeles, California. I am an oil worker, oil man. I have been engaged in the oil business since 1894. I am acquainted with a section of land in the North Midway Field known as Section 15, Township 31, Range 22. I first had something to do with that section during the fore part of June, 1909. I was employed by Mr. J. C. Yancy. Mr. Yancy represented his associates, who were Barnsdale, Sweeney, Drake, and myself. They were interested at that time in the south half of the section. I did not go to live upon the section just at that time. I don't remember the exact date I commenced to reside on the particular section in question, but it was about July, 1909. I continued to be employed on this particular section at different times for nearly a year. I did not reside there most all of this year; we had a camp, but I didn't live there. I was on the section at least three times a week. I had charge of the drilling for Mr. Yancy and his associates on different tracts of land. We had fourteen or fifteen drill rigs out. I was superintendent of all of that work. I was [267] on Section 15 in the fall of 1909. I know a man named Cunningham. I never saw him upon the northwest quarter of Section 15.

(Testimony of William G. Van Slyke.)

I saw him on Section 15 in the fall of 1909 at different times. I don't remember the exact date. I do not remember of any particular date when I saw him. I did not see him there about Thanksgiving, 1909. I have just said that I did not see him there in 1909. I meant by that that I did not see him on the northwest quarter. I saw him at different times about Thanksgiving, 1909, on the south half of the section. I did not have any conversation with Mr. Cunningham during all of the time he was on the section there. I was familiar with the tract of land described as the northwest quarter of Section 15 during the summer and fall of 1909. I do not know that the people I was working for had any interest in that particular quarter. I had no supervision myself over the northwest quarter of Section 15. During the summer and fall of 1909 we used to pass over that land in going to the south half of the section that we were interested in. These trips across the northwest quarter commenced along in June and continued throughout the whole of the year 1909. In June, 1909, the only improvements, outside of the road work, that I saw on the northwest quarter was an old derrick that used to be there. I do not know when that old derrick was erected. It was some time probably a year before, about 1908, I should think. I do not know what part of the northwest quarter that derrick was on, but it must have been on the east half of the quarter. When I saw the derrick in June, 1909, it was just a skeleton of an unfinished derrick. That derrick was never finished during the

(Testimony of William G. Van Slyke.)

time I was there. It was gradually taken away by different people. It was finally all taken away I guess along in August, 1909. We burned some of the material that was in that derrick for firewood. That derrick was never used to my knowledge for drilling an oil well. [268]

There was an old road that led up to Crocker Springs that ran along one corner of this quarter, and it ran down into a gulch, and they had scraped in there and made a fill at the bottom of the gulch. That work must have been done along in July, 1909. I used the road shortly after it had been done. That work was supposed to have been done by the Dominion Company, or the Butlers or the British-American Company. The road ran into the county road that went to McKittrick, and in going north it went to what we called Crocker Springs, a kind of a sheep camp. That road was always used. During the summer of 1909 the sheep and stock men and oil men that had locations used that road. It was a generally traveled public highway. Part of that road that crossed the northwest quarter of 15 was the old county road and it had become washed out there through the gullies so that people had to go around; and whoever done this work there, that is the Dominion Company, fixed it up so the road was open, so you could go over it again. Anybody that wanted to go over it could use the road across this northwest quarter of Section 15. This repair work consisted of scraper work with a scraper team, and making a fill in the bottom of a deep gulch. I don't know how

(Testimony of William G. Van Slyke.)

long it would have taken to do that work. I did not see the men at work there. I saw the work after it was done. This work was completed some time in July, about the middle of July. From that time until the end of the year I saw them building a cook-house, cabins, do grading for derricks, and hauling lumber on this quarter-section. They hauled rig lumber on the ground, and I saw them clearing around the cabins, cleaning off brush, sagebrush, and so forth, and cleaning up around there. I think the first work they did after they completed the road work in July was to do some scraping and make a kind of reservoir in the same canyon. That was done probably a month—probably in the [269] latter part of August. I am not sure of that date, though. I suppose they intended to use that reservoir as a sump-hole to catch their oil. When they drilled the well the drillings run into it, and they afterwards used it for oil.

The next work that I saw down on the property after the building of this sump-hole was the building of cabins. I think they were erected the latter part of September. I cannot give you the date on which the work on those cabins was commenced; it was before Thanksgiving Day, though. It was probably a month or so before Thanksgiving Day. I suppose it was the Dominion Oil Company that erected those cabins. I saw the men who were working on them. I don't remember the names of the men now. I knew Mr. Henry. He was there. I think he was the only one that I would know that was there. Be-

(Testimony of William G. Van Slyke.)

tween the time the sump-hole was finished and the time they were erecting the cabins there were men around there on the northwest quarter of 15. I don't know what they were doing; they were on the ground holding the ground. They were on the ground holding possession. I do not know who those men were. I did not see these men that were there erecting any structures there during that period. I think they lived on other ground and came there at different times. I did not see them dig any sump-holes or anything of that sort. They were there just kind of watching it. I do not know who those men were there. I saw them meet a person who was attempting to take possession of the land. I saw them keep others from going on the land. That was Thanksgiving night in 1909. I don't know who the people were that they kept from getting on the land. I did not know any of the men, we didn't see any of them, it was dark. I was there at that time. Mr. Yancy telephoned me to go there. I went over there and met Mr. Butler and several men that he had there. On that Thanksgiving night there [270] was a machine, automobile, loaded with some lumber on the sides of it, and the men on it tried to get on the ground, and Yancy's men that were under me were all armed with guns, and we had taken them over to help Mr. Butler keep these men off, and when the machine came up I think there were a few shots fired, and they turned around and went away, and I stayed there a few hours and went home to McKittrick. These shots were fired by

(Testimony of William G. Van Slyke.)

some of the men who were guarding the property. At that time there was a cabin erected on the land in controversy. I couldn't tell the exact date when that cabin had been erected, but a month or six weeks before. At that time there was a drilling rig on this property. The derrick had not been erected at that time. The mud-sills, and I think the main sill had been laid, and the rest of the lumber was laying on the ground. I don't remember when the derrick was completed on this property. I do not know when they spudded in the well. I do not know when they completed the well. I do not know when they discovered oil in it. The place where the mud-sills that I have described were first located became the site of Dominion well No. 1. I think that was the first well that was started on this northwest quarter of Section 15. Prior to Thanksgiving Day, 1909, I think there was a pipe-line, a 2-inch water-line, run across the property, and a small tank, galvanized iron tank. I do not know the exact time when they were put there, but it must have been in August. That water-line ran across the property, and I don't know where it did go to, but I suppose it ended there on the property, as far as I know. I think it came from the Santa Fe, Chanslor-Canfield Midway Oil Company's water-line.

Cross-examination.

(By Mr. WEIL.)

Q. Mr. Van Slyke, your memory is not very clear as to the [271] exact dates of things happening so many years ago, is it?

(Testimony of William G. Van Slyke.)

A. Well, some things, if there is something to remember by.

Q. Now, you remember the occasion very distinctly of the difficulty on the land on Thanksgiving night? A. Yes, sir.

Mr. WEIL.—For the information of everybody, may it be said that Thanksgiving that year was November 25th.

Mr. HALL.—I think that is the correct date.

I think this lumber was placed on the northwest quarter probably six weeks before November 25th. I wouldn't be certain about that. It might have been as early as two months prior to that time; I don't know.

Q. For your information and to refresh your recollection, I will say the records of the King Lumber Company show that 15,000 feet of lumber were placed upon this land on September 17th, and about 2,000 feet on September 24th. Now, assuming that that date is correct, from that time forward were there men on that land?

A. From that time forward?

Q. Yes. A. Yes.

There were men on there from the time that they built the cabin, and before that there were men there. I will say that there were some men on the land at all times from the time the lumber was put on the land. I don't know, but I think that these men that were on the land were the men that did the work on this road besides being watchman. When I first went down on the southwest quarter of Section 15

(Testimony of William G. Van Slyke.)

where I was drilling for Mr. Yancy, there was some considerable period of time when I did not go across the northwest quarter. I made a detour there over a rather bad road. We did not go across the northwest quarter during that [272] period of time because we could not pass this gulch until after it had been filled. This gulch was afterwards filled up and the road put in fairly good shape by the men who developed the northwest quarter. It was in July we started to get ready to drill on the southwest quarter. We were short of water there and we could not drill. We finally spudded in the first time some time in July and then the well was shut down, and afterwards when we secured water we went ahead again.

Q. Now, during that period when you first spudded in and when you were shut down, were you then using that road across the northwest quarter, or was it later you started to use the road across the northwest quarter?

A. We had a well on Section 19 in the same township and range, and we used that road to go up there when we wanted to go out through the Midway.

It was in July that we started to use the road across the northwest quarter of 15 instead of making the detour. I am sure I started in to use it as early as that.

I remember when the lumber was first put on the northwest quarter, but I don't remember the exact date now. I remember seeing the lumber there. We were watching these things to see they didn't get on to any of our land. We did not use this road

(Testimony of William G. Van Slyke.)

before they put the lumber on the land, we could not pass that gulch; we had used it up to as near as we could to it, and then we had to turn around and go back. We did not use the road across the northwest quarter habitually until after the lumber for the house was put on the land. The first lumber that came on was house or cabin lumber. About that time it was very hard to get rig lumber in the Midway field. The King Lumber Company was the usual source of supply for rig lumber in the Midway field. This development work on the [273] northwest quarter of 15 was the most northwesterly development in the whole field at that time. It was at the extreme end of the Midway field, going towards McKittrick. There was no development beyond that at that time, nor has there been any development there since. This is the frontier of the field. We had all of that drilling material and a good deal of the house lumber bought from the King Lumber Company. That was bought during July, August, September and October of 1909. During that period we had practically contracted for everything the King Lumber Company could furnish, except some house lumber, finishing lumber. No one could get a rig very well without our permission. It was not practical to get any lumber from any other source on short notice. It took about 60 days to 65 or 70 days to get a drilling rig in.

Q. Now, what was the water situation way out here on this frontier of the field at that time?

Mr. HALL.—May I just have an objection now that any delay caused by lack of drilling material or

(Testimony of William G. Van Slyke.)

rig material or lumber, or any lack of water, is not competent, and would not under any circumstances excuse the diligent prosecution of work leading to the discovery of oil on these lands prior to September 27, 1909, or in fact subsequent to that date?

The COURT.—Very well.

Mr. HALL.—And may I have that objection throughout the entire record?

The COURT.—Yes, to all that character of evidence.

Mr. HALL.—So I won't have to disturb counsel and the Court so much.

The COURT.—Yes. Let that be understood.

Mr. HALL.—And that goes to all witnesses' testimony, so I need not renew it. [274]

The COURT.—Yes, all witnesses that testify on that subject.

(Question read.)

Mr. WEIL.—I am referring to the fall of 1909.

A. The only domestic water that we had came from—it was either hauled from McKittrick or gotten from the Santa Fe Company's pipe-line, the Chanslor-Midway.

I tried to get water from the Santa Fe for our development on the southwest quarter of 15 and could not get it. They would not let anybody have it. We leased a well known as Crocker Springs from Miller & Lux and laid a pipe-line from there to 15. The Stratton Water Company was on the northeast quarter of Section 7, township 32 north, range 23 east, about six miles from Section 15. Crocker Springs

(Testimony of William G. Van Slyke.)

was on Section 14, township 31-21, about three miles west and two miles north of Section 15. We had a 2-inch water-line over there. The people who afterwards operated on the northwest quarter of Section 15 attempted to get water from us. They didn't get it. We didn't have it to spare. This 2-inch pipeline that I spoke about having been laid across this section was not laid by our company. Our line came over from the west. Ours came in directly to the southwest corner of Section 15.

We ran 13 or 14 rigs altogether during this period of development. We actually drilled about 9 or 10 holes. We started about 15 holes, but some of them were not drilled very deep. Out of the total number of wells that we drilled in this particular country we got oil in one.

The road was repaired and we began to use it instead of making this detour before the lumber was put on the northwest quarter of Section 15. The lumber was put on shortly after the road was fixed. The road was built first and then the lumber was put on, but they were close together. I don't know the exact time [275] with reference to Thanksgiving that they actually spudded in the well on the northwest quarter. I think it was after Thanksgiving. I do not know when they got oil there. It was about a month after they began building the rig that they had the oil. It would be around Christmas time. It was hard to get rig builders during the months of September and October, and harder to keep them after you got them, because there were only a few in

(Testimony of William G. Van Slyke.)

the field and nearly everybody wanted them to work for them and put up rigs.

Redirect Examination.

(By Mr. HALL.)

Q. These men that were on the property prior to the time the cabin was built, were these men that were just there during the daytime to keep off intruders, were they not?

A. They were there daytime and night-time too, and carried a big gun.

Q. And they were not the men that came there afterwards and became the crew that improved the property, were they?

A. Well, some of them worked with the crew that came afterwards.

Q. But those men that were there before the cabins were built, they lived some place else, did they not?

A. Yes.

Q. How long did you say it took at that time, or during the summer of 1909, to get the timbers for a rig?

A. We had some orders out that were 70 to—some of them as long as 90 days before they came in.

We had that trouble right on the start. The King Lumber Company at McKittrick only carried about one rig in stock. The start of that trouble was in July, 1909. There wasn't anything doing much in the field prior to July, 1909; there wasn't any trouble to get rig timbers, because there was nobody trying to get very many. No one was trying to get rig timbers prior to [276] July, 1909, and for that rea-

(Testimony of William G. Van Slyke.)

son the lumber companies never carried much of a stock. I was in the field in 1908. I did not have any difficulty during the year 1908 in getting rig timbers. I was with the Associated Oil Company, and they were only using one rig. I don't think they had any trouble in getting rig timbers, because they weren't doing anything in new drilling. I did not know anybody in 1908 that had any difficulty whatever in getting rig timbers. They all had to wait, though, when they put in the order, unless they would take these rigs that were in stock, and lots of companies didn't use the same kind of rig timbers and derricks that they would carry in stock. In 1908 it would take from 30 to 90 days to get the rig timbers and the rig-irons and rig up a derrick for drilling in that particular locality. The only water that I know of in this field in 1908 was piped into the Chanslor-Canfield Midway Oil Company.

Q. Did you make any application to the Chanslor-Canfield Midway Oil Company for water in the year 1908?

Mr. PRINGLE.—One minute. I take it, if your Honor please, I may have an objection to run to all this.

The COURT.—Yes, certainly. The evidence shows that this filing was made in 1908.

Mr. HALL.—Yes, and this is a question of diligence.

Mr. PRINGLE.—I think the question of diligence dates from a later date. That is the reason for the objection.

(Testimony of William G. Van Slyke.)

The COURT.—Yes, I think it does, too, as a matter of fact. Proceed.

A. Shall I answer the question?

Mr. HALL.—Yes.

A. The question was whether there was any water in 1908?

Mr. PRINGLE.—One minute, Mr. Van Slyke. The Reporter will [277] read the question.

(Question read.)

A. No, sir.

Of my own knowledge I do not know of anyone else who made application to the Chanslor-Canfield Midway Oil Company for water in the year 1908. I think the Stratton Water Company was in existence in 1908. I did not make any application to them for water for drilling purposes; they had nothing but a sulphur well, sulphur water. I could have used that water for drilling purposes. It was not good for a boiler or drinking. We got the water for drilling on the southwest quarter from Crocker Springs, Section 14. That was a line independent of the Santa Fe or Chanslor-Canfield Midway Oil Company's line. We laid that line and put the wells down. It must have been about the 10th of June, 1909, we started in to dig the wells, and then as soon as we found we had developed enough water for drilling a well, we started to lay the line. It took about 12 days to dig the wells. The first water well was completed in about a week after we began work, and then we put a pump in that, and we kept a crew of men digging new wells all the time. It took

(Testimony of William G. Van Slyke.)

about 10 days to lay the water line from the Crocker Springs well over to the southwest quarter of Section 15. I think it was about a month after we started the wells at Crocker Springs before we were delivering water to the southwest quarter of Section 15. That was a water system that was owned by our own people. Miller & Lux had a well at Crocker Springs that they reserved for watering sheep and cattle. There were no other wells there on that quarter outside of ours and the Miller & Lux well. There were other wells in that vicinity. Miller & Lux had another well on Section 13, and Arrabonni had one on another quarter of 14. The Cree Oil Company had one on 14. There was a Frenchman named Arreggi also had a well. [278] Those were all the wells that were in that vicinity. We crossed the Chanslor-Canfield line coming down to Section 15. They ran across Section 17. They were pumping water at that time into the country. They had large tanks on Section 17, and a pipe-line from there into the Midway. They were getting water from what they called the Santa Maria Valley, the Santa Maria Springs, back of McKittrick. During 1909 they had a 4-inch line down through that country and afterwards they laid a 6-inch line to the tanks, and a 4-inch line out to the oil field. This 4-in pipe-line down through the valley was laid by Canfield and Chanslor when they first started to develop the Midway, several years prior to January 1, 1909. I do not know how many wells were being drilled with water in this North Midway field from January 1,

(Testimony of William G. Van Slyke.)

1909, on up until Thanksgiving, 1909. I think the Santa Fe Company put this 6-inch pipe-line down through this country in the fall of 1909. They just laid that from their wells to the tanks. It might be a fact that they had already completed their 6-inch line down from McKittrick for water purposes in the spring of 1909; I am not sure about that. I know of people getting water from tank-cars in our vicinity. The Railroad Company shipped water in there, and people around there got it. That was used for drilling as well as domestic purposes. I don't know of anybody that used water shipped in in tank-cars exclusively for drilling in 1909. We used some of it in 1915. When we first started to drill on Section 15 we used water that was shipped in. We hauled it about 10 miles out there in tank wagons. We used it for domestic purposes and for drilling. After we developed enough wells our supply of water up at Crocker Springs was ample for drilling one well on the southwest quarter. We developed enough wells about the time we got through drilling the first well on the southwest quarter. That was the latter part of August, 1909. [279] At that time we had enough water developed for about two *strings*. We still had only a 2-inch pipe-line down there. We were furnishing water for a well on Section 19 at the same time we were drilling this well on 15. That was our own well on 19. It depends on the pressure you get back of the water as to how much a 2-inch pipe-line will deliver down there. We pumped into our line. At that

(Testimony of William G. Van Slyke.)

time we could get through the 2-inch pipe-line about 1500 barrels a day, if we could produce the water. We had a shortage of water at Crocker Springs. When we completed the first well in August, we had not developed enough water for more than two wells. About the best we could do was two strings of tools, and either the well on 15 or 19, one of them, was shut down about half the time for water. Both of those wells were drilled to completion. The well on 19 never produced any oil. The Government grabbed the land in Section 19 away from them and they had to quit. We went 2800 and some feet in that well on Section 19. The well on the southwest of Section 15 was drilled about 900 feet. The well was finally finished at that. After we struck oil we left it at that for awhile, and went back to it and finished it up later. The water line that crossed the northwest quarter of Section 15 was not our line. It belonged to somebody else. It entered the quarter about the southwest corner and ran out about the center on the east side. I don't know whether that line went over to the Union Oil Company's property on Section 10. I don't know where it went to, nor where it came from—well, it went up to the Midway, Chanslor-Canfield's Midway pipe-line. The Chanslor-Canfield pipe-line and the Santa Fe pipe-line is all the same. It is sometimes called by one name and sometimes by the other. I do not know it to be a fact, but I presume that this line across the northwest quarter of 15 connected with the branch line of the Union Oil Company, which [280] led

(Testimony of William G. Van Slyke.)

out of the Chanslor-Canfield main line. After it left the northwest quarter of Section 15 it went over onto Section 16, going west. It did not connect with any other wells to the west, there were no other wells at that time being drilled in there. That water-line was a 2-inch pipe. I do not know who put it in there. I think it was put in in July or August, 1909. I don't think there was anyone pumping any water out of Buena Vista Lake at that time. They might have taken and hauled it out. There was nobody bringing water from Rio Bravo into the field at that time except by train. In after years there was a line run from Rio Bravo and one from Buena Vista Lake up into that field; they are in operation now. I was not familiar with the development of the Honolulu people's lands in the spring of 1909. They were pumping out of wells on the shore of Buena Vista Lake early in the spring of 1909.

Recross-examination.

(By Mr. WEIL.)

Q. As a matter of fact, Mr. Van Slyke, refreshing your own recollection, wasn't that water-line of the Union laid across this land in November instead of August?

A. No, I think it was laid there before that.

Q. Well, are you sure?

A. No, I am not sure of it.

During 1908 there was no water at all to speak of piped in that end of the Midway field. There was no water there for any kind of work. Unless

(Testimony of William G. Van Slyke.)

you brought it with you, you didn't get a drink. The first well that was dug at Crocker Springs was a shaft about 5 by 7. The first well produced about 20 or 30 barrels of water a day, and then we afterwards drilled with a string of tools, we drilled a hole down, a 6-in—about a 5-inch hole—drilled that down about 80 feet, and we would strike water that laid in the shale [281] there. The shale stood up on edge, and we would strike some of those seams and it would come up like an artesian well, but in a week or so they would exhaust. I remember discussing this case with you (Mr. Weil) the other day in Los Angeles. I said to you that during the period of September, October and November, these watchmen who were on the land were always doing some work, either in the way of clearing brush or fussing with the road. They always had something laid out for them to do besides just watching the land. That is my personal recollection of it.

(By Mr. L. W. ANDREWS.)

In 1909 the railroad at McKittrick was 10 or 11 miles from the land in question. The road to McKittrick was not good. You could haul water for drilling purposes that might be brought in by the train. The expenses, though, were too great. The water that was hauled was used for domestic purposes, and then we just used enough to start up, to get everything ready to go. It required about 120 barrels per day in drilling operations. I don't think anybody in that district depended on water from tank-cars for drilling, other than to just start up

(Testimony of William G. Van Slyke.)

and just for domestic purposes. I think the expense was too great getting it in for them to go ahead in that way.

Redirect Examination.

(By Mr. HALL.)

On this section we encountered oil all the way from 500 feet to—well, I guess the deepest that was drilled there was about 1700 feet, and drilled below it—about 1500, 1200. It is shallow territory up there. There are different layers of oil there, stratas of sand. There was no water above those oil sands that could be used for drilling purposes. It was all dry. They never cemented the wells at all, never produced any water to amount to [282] anything.

Testimony of C. E. Henry, for Plaintiff.

C. E. HENRY, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is C. E. Henry. I reside at Bakersfield, California. I am a rig-builder. I have been engaged in the rig building about 12 or 13 years. I think I commenced building rigs in the Midway and North Midway fields in 1908. I am acquainted with a tract of land that is described by legal subdivisions as the northwest quarter of Section 15, in township 31, range 22, and sometimes known as the Dominion Oil Company's property.

(Testimony of C. E. Henry.)

Q. When did you first become acquainted with that quarter section of land?

A. Why, about the—around about the 20th or 21st of November, 1909.

Q. Under what circumstances did you become acquainted with the land?

A. Well, I was requested to build a rig there.

Q. Who requested you to build a rig?

A. W. C. Maxwell.

Q. Do you know what corporation or interest Mr. Maxwell represented in that transaction?

A. No, sir.

Q. When did you first visit the land for the purpose of erecting a rig?

A. Well, it was around about the 20th or 21st of November.

Q. Did you go to the particular quarter itself?

A. Yes. [283]

Q. Who pointed out to you the lands?

A. Why, I think Mr. Best.

Q. Did you at that time make any observations to ascertain what improvements, if any, were upon this quarter-section of land?

A. No, I didn't take any notice.

Q. Do you remember now of having seen any improvements there?

A. No, nothing except material for the rig and the cabin was on the ground.

Q. Was the cabin itself erected at that time?

A. No.

(Testimony of C. E. Henry.)

Q. Can you describe to the Court what material you found there?

A. Well, all the lumber for a rig and enough lumber to build a cabin.

Q. Do you know or have you any knowledge as to when that lumber was put upon the quarter?

A. No, sir.

Q. What was the first work that you did upon the quarter-section? A. Built the cabin.

Q. And do you remember what day it was that you built it?

A. Not exactly, no; it was around about the 20th or 21st; probably it might have been the 22d of November.

Q. What were the dimensions of the cabin that you erected? A. 14 by 16, I think.

Q. Was there one room, or more than one room?

A. One room.

Q. How long did you take to build the cabin?

A. About a day.

Q. How many men did you have employed in that?

[284] A. Just one besides myself.

Q. Who was that? A. Claude Nickerson.

Q. (By Mr. PRINGLE.) You, yourself, worked?

A. Sir?

Q. You, yourself, worked? A. Yes, sir.

Q. (By Mr. HALL.) The two of you worked at that and it took you about a day to build it?

A. Just about.

Q. Were there any other structures at all upon this quarter-section at that time?

(Testimony of C. E. Henry.)

A. Not that I know of; there might have been; I didn't take notice of any.

Q. Did you see any drilling rigs? A. No.

Q. Were there any persons upon the quarter-section at that time that you were there? A. Yes.

Q. Who were they?

A. Well, I don't remember all of them. Mr. Best, Mr. Montgomery, and I think Mr. Davis came while I was there.

Q. What were they doing?

A. Well, they were getting ready to start operations, I guess; I don't know; I couldn't say what they were doing.

Q. Did you see them erecting any structures of any sort there? A. No.

Q. After you built the cabin, did you do any other work on the quarter? [285]

A. Yes; I put the timbers in for the rig.

Q. What portion of the timbers, so the record may show?

A. Why, four mud-sills that lie flat on the ground, and a sub-sill, or main sill that lies on top of it.

Q. Did you go on and complete the derrick?

A. No.

Q. Had you a contract to complete the derrick?

A. Yes.

Q. What was the reason that the derrick was not completed by you?

A. Well, I had other work that had to be attended to

Q. Do you know who completed that rig?

(Testimony of C. E. Henry.)

A. Well, I eventually completed it myself; that is, I had a crew, but in the meantime, Dunn from Maricopa sent a crew there and they worked a day or so at it and left, and afterwards I came back and finished it; that is, I sent a crew over there.

Q. Do you know what time Mr. Dunn's crew worked on it?

A. Why, right around Thanksgiving. I don't know whether it was the day before or the day after, or Thanksgiving Day.

Q. Do you know how long they worked on it?

A. I think they only worked a day.

Q. And your crew, I believe, then returned and completed it? A. Yes, sir.

Q. When was the rig completed by your crew?

A. Well, around about the 7th or 8th of December; I should say something like that.

Q. Did you put the rig-irons on the derrick?

A. Yes.

Q. How long before you actually started on the erection of the derrick by the laying of the mudsills were you approached or asked [286] by anyone to erect the cabin and the derricks?

A. Before?

Q. Yes.

A. Oh, I should say a couple of weeks; something like that.

Q. Were there any rig-irons or tools upon the property when you went there to erect the cabin and the derrick? A. I couldn't say.

Q. Do you now remember of having seen any?

(Testimony of C. E. Henry.)

A. No.

Q. Who compensated you for the—

A. W. O. Maxwell.

Q. W. O. Maxwell personally?

A. I don't know; I couldn't say now whether it was a personal check, or what it was. Anyway it was good, and I got it cashed right away.

Cross-examination.

(By Mr. WEIL.)

During the months of September, October and November I was in the Midway field. It was pretty hard to get rig-builders at that time. I had a good deal of work ahead of me.

Q. You had been considerably importuned to start this work for some time before you actually went to work, hadn't you?

A. Yes, a couple of weeks; something like that.

Q. And it might have been more than that?

A. Well, I should say about two weeks.

I was then working for Mr. Van Slyke. He gave me permission to leave his job to go over and do some work over here, and then I had to go back to his job. That was why I had to complete that rig, and the people who were operating on the northwest quarter immediately attempted to replace me with Dunn's crew. Dunn's crew [287] also left, and then I went back.

Q. How long after that did you go back?

A. I should say it was—from the time I first went there, it was possibly seven or eight days; it might

(Testimony of C. E. Henry.)

have been a little longer; it might not have been so long; I can't just remember.

When I went back there the second time I noticed rig-irons in addition to lumber were on the ground. I couldn't say whether the boilers and engines were there at that time. I had no occasion to use them and I didn't take any notice. There were five or six men on this land at the time I first went there. Among those I named was Mr. Best. He was the driller who drilled the well. He appeared to have charge of the roughnecks when I went there the first time. I didn't know Mr. Tarra. I couldn't say whether there were any other drillers or tool-dressers on the land at the time I went there to build the rig. I knew Davis; I think he was there in the capacity of a cook. I couldn't say whether there were any tools on the land when I went there the second time.

Q. What were these men, Best and the others, doing while you were building the rig?

A. Well, they appeared to be doing all they could under the circumstances, what they could do with.

Q. They started in rigging up, did they?

A. Yes, sir.

Q. By the way, when you first went on there, was all the light lumber on there for the derrick, do you remember?

A. I think so; I didn't get far enough along with it the first time to find out everything that was there.

(Testimony of C. E. Henry.)

Q. Now, when you quit the second time, was the derrick complete? A. The second time? [288]

Q. Yes. A. Yes, sir.

Q. Was the calf-wheel in there? A. Yes, sir.

Q. Didn't you go back afterwards and build the calf-wheel?

A. Well, that is what I meant by that, when I finished it; it was complete after I built the calf-wheel.

Q. But you had to go back there to build the calf-wheel because they didn't have material for it; is that right? A. Yes, sir.

Q. Do you know when they spudded in?

A. It was along about the 10th, December 10th; along there somewhere.

Q. Just about the time you finished the derrick, was it, and while you were building the derrick, the men around there were getting everything else ready, were they? A. Yes, sir.

Q. Working busily? A. Yes, sir.

Q. So as soon as you were through, they were ready to carry forward the work? A. Yes, sir.

Q. How was the weather out there along that time?

A. Well, it was a little stormy about that time; the fall rains had started.

Q. Do you know that was the reason why Dunn's men quit on the job after one day, on account of the heavy rain they had there?

A. Well, I don't know for sure why they quit, but it was not very comfortable around there.

Q. Do you know whether the rig-irons were deliv-

(Testimony of C. E. Henry.)

ered on the [289] lease at the time Dunn's crew was on there? A. I think they were.

Q. You were not delayed by any lack of material, were you, except in this case of the calf-wheel timbers? A. That is all.

Q. Otherwise the material was there. Now, do you know Mr. Fraser? A. Yes, sir.

Q. Did he ever ask you to kindly hurry and go over there and get this work done?

A. He did on the second time; the second time I went over there he was the man that came after me.

Q. And it was largely on account of your personal friendship for Maxwell that you went over and did this work?

A. Yes, sir; through that and—

Q. And you wanted to accommodate Mr. Fraser, as well, didn't you? You knew Fraser was the superintendent of the California National Supply Company, and you knew he was in a position to assist you to get work? A. Yes, sir.

I was not delayed by any lack of material, except in this case of the calf-wheel timbers. I knew Mr. Fraser. He asked me to hurry and go over there and get this work done; the second time I went over there he was the man that came after me. It was largely on account of my personal friendship for Maxwell and that I wanted to accommodate Mr. Fraser that I went over and did this work. I knew Fraser was the superintendent of the California National Supply Company and he was in a position to assist me to get work. When he asked me to

(Testimony of C. E. Henry.)

hurry to this work I wanted to oblige him. The lumber is the only thing I have any recollection of seeing the first time [290] I went on the land. There was a road there. It was a fair passable road. The place for the rig was naturally level. The sagebrush had been grubbed out. I wouldn't say that the boiler and engines were not on the ground when I went back there the second time. I can't say that they put them on there while I was there. I think they were there by the time I completed the rig. They started up within just a day or so after the rig was completed, so the engines, boiler, tools and other equipment must have come on the ground. I do not know how many feet of lumber were on the land the first time I went there. I think all the rig lumber was there, and it would be around about 20,000 feet; and then there was lumber for the cabin as well. They used different kind of lumber for building cabins than they used in building rigs. For the cabins they used soft pine, white mountain pine, and for the [291] rigs they used Oregon pine or Douglas fir. Both of these kinds of lumber were on the ground. The rig lumber was at the point where the rig was built by me, and the cabin lumber at the point where the cabin was built. The lumber was piled up nicely. It looked like new lumber. I don't think it had been lying there for months. I do not know when that lumber went on the ground.

Redirect Examination.

(By Mr. HALL.)

I couldn't say how long the lumber had been there.

(Testimony of C. E. Henry.)

The ground on the northwest quarter of Section 15 has different levels, but where the rig was it was comparatively level. The sagebrush that grows there is generally about four feet tall. It was necessary to clear away the sagebrush. That was not done while I was there. I think it had been done, either that or there had been a barren spot in the brush; I don't know. I can't say that I saw anybody actually cutting sagebrush while I was there. I couldn't say whether there was a boiler or engine there while I was there. I didn't see any that I now remember of.

Testimony of F. B. Sowers, for Plaintiff.

F. B. SOWERS, a witness called on behalf of the plaintiff, having first *being* duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

I reside in Maricopa, California. My principal occupation is following the oil fields, rig-builder. I am acquainted with the Midway and North Midway fields. I have been working in those fields since April, 1908. I was there in 1909. I was employed by J. M. Dunn of Maricopa in 1909. Mr. Dunn was a rig-building [292] contractor. His headquarters were at Maricopa. I know a tract of land described as the northwest quarter of Section 15, township 31, range 22, or as the Dominion Oil Company property. I worked about a half a day, or near a day on that property. It was the day after Thanksgiving, 1909. We put in the derrick corners

(Testimony of F. B. Sowers.)

and the derrick foundation. When we went there the mud-sills and main sill of the derrick foundation were in, and the timbers were in. There were no other structures that had been erected there that I remember of. I worked there part of one day. We quit because we didn't like the accommodations there very well. There were no accommodations for the rig-builders. We couldn't find any, except there they told us we could stay there with some men that were on the location there. There were other men there. They seemed to be watchmen.

Q. What kind of accommodations did these other men have there?

A. Well, they had some boards with the rig lumber leaned up against some other boards; that was about the most I see to sleep in.

It was just sort of a lean-to. The work that we accomplished there that day was about what it would take two men to do in one day; we put down the derrick foundation. There were no other structures outside of this immediate place upon this quarter-section that I remember of. I did not see any evidences of any oil wells having been drilled there, or any facilities for drilling oil wells. I don't remember of seeing any machinery at this well site when I was there. There were four of us actually worked on this rig. When we left there we went back to Moron, what is now Taft. I did not return at any time to this rig. I went there with the intention of building the rig. I and the men who were with me were prepared to carry out that intention. We were

(Testimony of F. B. Sowers.)

equipped so far [293] as tools and our personal belongings were concerned to carry on the building of the rig. We stopped because we couldn't get any accommodations to stay, a place to stay, to sleep. Some of those men on the location told us we could make a lean-to like they had to sleep under, and eat with them if we wanted to. I did not see these other men that were on the location doing any actual work on the property while I was there.

Cross-examination.

(By Mr. WEIL.)

I am now working for Mr. O. P. Good, of Fellows. Immediately before I went to work on this rig in question I built a rig out on the western meadows southeast of Taft. I don't know where I was immediately prior to that. Immediately after our work on this rig we went just south of what used to be old Moron, now Taft. I forget the name of the lease; it is in the canyon near the Mascot lease. I don't remember what day it was I went to work at this last place; somewhere two or three days after Thanksgiving. I went to work on this northwest quarter of Section 15 on Thanksgiving Day. I didn't notice any cabin on this land. I know Mr. Best when I see him. I didn't know him at that time. I don't remember whether he was on the land then. I don't know any person who was on that land at that time, except a man that was a rig-builder, a man by the name of Horstman. He had put in the timbers for the rig before we got there. I believe he and Mr. Henry were in partnership. I know Mr. Henry. I

(Testimony of F. B. Sowers.)

heard Mr. Henry say that he built a cabin on that land before Thanksgiving. I didn't notice any cabin. I looked around for accommodations on the land. I would think that I would have probably seen a cabin if it was there.

Q. So you don't believe Mr. Henry when he says he built a cabin there a couple of days before you went on there? [294]

A. I don't know; I didn't see it; I didn't notice it. I don't know just how many men were on there when I went there. I would say 6 or 7 or 8 possibly around there some place. I don't know whether any of them were drillers. I wouldn't say they were not. I don't know whether there were any tool-dressers there. I didn't see any around there. I have been working around the field since April, 1908, through the west end of the field. I didn't know most of the drillers around there. There was a good deal of work for rig-builders about this time; they were all busy. It is not a fact that somebody offered us a better job and that that is why we quit building this rig on the northwest quarter of 15. We did not go down to Fractional Section 30, Township 12, Range 23, right after that. I cannot place that section.

Q. Your employer, Mr. Dunn, was involved in a lot of trouble himself down on the flat with jumpers.

A. Well, I worked on a number of rigs down on the flat after that.

I don't know whether the jumpers were jumping land claimed by J. M. Dunn and his partner, Mr. Berry, and that Mr. Dunn was trying to protect him-

(Testimony of F. B. Sowers.)

self. I am prepared to swear that I was not taken off of this land for the purpose of protecting some land of Mr. Dunn's. I don't remember whether I built a rig on Fractional Section 30 or not. I believe I worked on Section 32 down on the flat; I don't remember what quarter. I was in charge of this gang up there on the northwest quarter of Section 15. I went off of there because there were no accommodations. I looked around there all afternoon trying to find accommodation. I didn't notice this cabin; they told us we could fix up a lean-to and sleep there with them where they were sleeping and eat there.

Q. And you are prepared to swear the other men were not sleeping in this cabin?

A. I don't know where they were sleeping; they had some lean-tos. [295]

I don't know how much Mr. Dunn got for the work myself and my associates did on this rig.

Q. For your information I will tell you that he got \$60. Did you do \$60 worth of work that half day?

A. Well, we were getting straight time; we were paid straight time.

I got about \$6.50 or \$7.00 per day. The other men with me got about a dollar less. There were three besides myself. We only worked about a half a day. The rest of the time we were on the road. At that time the weather was pretty stormy; it was raining when we got there in the evening. It was raining quite a bit at that time.

Q. As a matter of fact, you didn't like it out there very much and didn't look around for a cabin?

(Testimony of F. B. Sowers.)

A. Yes, sir; I looked around, went to two or three different leases.

I don't know whether the rig-irons were on the land; I didn't have any occasion to use them. I didn't see a boiler and engine there. I wouldn't say it wasn't there. I remember that I didn't see it. I remember that I didn't notice any boiler. I remember that there was a number of boilers and rigs on the land south of Taft where I built a rig when I left this land. We built a rig right close to the boiler. There were some other rigs on this other piece of land. When we got to this land there was enough lumber there for a complete rig; it looked enough for a complete rig. When we got to this derrick in question there was enough work done that would have taken two men somewhere near half a day to do. We did about what two men would do in a day. I do not think Mr. Dunn was overpaid for the amount of work we did if he got \$60. I know I wasn't overpaid. [296]

Q. Would you say, in your opinion, being a foreman and rig-builder, that there was not \$60 worth of work done on that derrick by your crew?

A. Well, that depends a good bit on how you count the crew's time. A rig-builder usually gets straight time when he is traveling on the road and working.

We traveled from Maricopa. It took us one day to go up there. By the road it is 18 to 20 miles up there. I believe Maricopa was the end of the railroad in those days. I don't remember whether the railroad was built into Taft at that time. It was

(Testimony of F. B. Sowers.)

built some time around there; I am not certain whether it was before or after. We went up there by team. If the railroad had been built up to Taft we would have gone to Maricopa by team. We would have had to ship the tool-box on the train and transfer it by wagon. It took us the whole day to make 18 miles. We worked there a half a day and it took us about half a day to go back. We made better time going back because we knew where we were going and we didn't know when we were going up. I had been at Maricopa, my home, the night before we started. The other men were all sober. We left Maricopa Thanksgiving morning. We got up to this property some time before dark. I don't remember just what time, but it was dark when we got to a place to stop for the night. We slept in a cabin to the north of this Section 15. This cabin was something like two miles north of Section 15. I don't know whose cabin it was; I have forgotten. It was pointed out to us by two or three people. We were hunting in the wagon for a place to sleep. No one on the northwest quarter told us to go and sleep there; they didn't know of any place.

Testimony of F. F. Best, for Plaintiff.

F. F. BEST, a witness called on behalf of the plaintiff, having first been duly [297] sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is F. F. Best. I reside at McKittrick,

(Testimony of F. F. Best.)

California. I am a well-driller. I have been engaged in the oil business about 17 years. I have worked about McKittrick and in the neighborhood of Fellows. In 1909 I was first working for Mr. Burns on the Brookshire; from there I went to the Dominion. The Dominion property is the north-west quarter of Section 15. I went to the Dominion property some time in November of 1909.

Q. Who was in charge of the property when you went up there?

A. Well, in fact, there wasn't anyone; there was one or two men when I went there first.

Q. Were there any improvements on the property when you went there?

A. Nothing that I noticed.

Q. Beg pardon?

A. Nothing that I noticed.

Q. Did you help to put any improvements on that property after you went there?

A. Well, we were sent out to protect the property.

Q. In what way?

A. Well, to keep fellows from jumping it.

Q. And who sent you up there to protect it?

A. M. Z. Elliott and Mr. Butler.

Q. Can you fix any more definitely the time when you arrived on the property?

A. I don't think so; no.

Q. Was it before or after Thanksgiving?

A. Before. [298]

Q. About how long before?

A. Oh, I would say a couple or three weeks.

(Testimony of F. F. Best.)

I don't know the names of the men that I found there; there was, I think, one or two. There might have been three, possibly. They were on the property when I got there. There were no buildings there for them to stay in. The first evening we slept under some lumber which was piled up, just a little shed; a little after, perhaps the next day or so, Mr. Henry built a bunk-house for us, a place to sleep. I don't know exactly how big a bunk-house that was; not very large. That is the one that Mr. Henry testified about here. I continued on this property from the time I went there until about the last of April or May, 1910. When I went there I did not notice any derricks. I did not notice any structure of any sort. I don't just exactly remember when the derrick was finally completed on this property, but I know about the time we started, and we were rigging up during the time they were building the rig. The well was spudded in about the 8th or 10th of December. I continued there as a driller. I was there when oil was discovered. It was discovered along about Christmas time. There was first a little showing of oil at a depth of about 535 feet, and it continued to 800 feet, little streaks of shale, and then there was some oil in it. It came in as a producing well at 800 feet; that is where the sand was. The well came in as a producing well. I don't know what the production from it was, I wasn't there then. After I finished this well I did not continue to work on the property. I went over on Section 27 for Maxwell.

(Testimony of F. F. Best.)

This well that I have just described was commonly known and designated as Dominion Well No. 1. I was paid by the Dominion Oil Company by checks. I know a man named R. L. Davis when I see him. He was not working there when I went there; he came there [299] afterwards. Mr. Davis came there a short time after I did, perhaps a day or two. Mr. Davis was put to work cooking.

Cross-examination.

(By Mr. WEILL.)

I have not kept any memorandum for the purpose of refreshing my recollection as to what happened in 1909. I am not very sure as to exact dates. I don't think I have changed my statement a few times in reference to the time I went to work on this land. I remember an affidavit I made in this case.

Q. In that affidavit you said you went to work there in September or October, 1909.

A. Well, now, I think a man ought to have a chance to change—

I don't really remember the time I went there, but it was this way: I think I was working for the Brookshire in October; I won't be positive, but I think so, and immediately after I quit there, I went to work for the Dominion. From three to six weeks prior to the time I went to work for the Dominion, Mr. Butler made arrangements that I should go to work there. Mr. Butler made arrangements for me to go to work on this particular piece of land. He made arrangements for me to go to drilling. I was supposed to be a driller. That was my business. I was the first

(Testimony of F. F. Best.)

driller on this Dominion well No. 1. I can remember when the rig was built, but I don't know the date exactly. It was in the neighborhood of three weeks, probably after I landed there until the rig was started. I think I went on the land about the first week of November. It may possibly have been the last week in October. Mr. Butler had spoken to be about going to work there as a driller probably three to six weeks before. That is the nearest I can recollect at this time. My present recollection is that the first discovery of oil on the property was along about Christmas time, 1909. I was waiting for this job. There were from 1 to 3 men on the land when I went there.

Q. And you don't remember what they were doing?

A. Nothing, only guarding the property. [300]

Q. Were they doing any work on the road?

A. Not at that time.

Q. When was the work done on the road?

A. Well, that was some time after the rig had been there.

Q. Did you do any work on the road?

A. I helped, too; I oversaw.

I helped to erect this lean-to to the bunk-house which was being used for a kitchen. That is where I slept. I was there when Mr. Dunn's men were on there. I don't know of anyone pointing out this cabin to them that was on the land when they were on there. The cabin was plainly visible from the rig site. It was a hundred yards or more from the rig and in plain sight. There was a road across the land. There were places where the road was not in very

(Testimony of F. F. Best.)

good condition. Some work had been done on the road, and there was some work done on the road while I was there. I superintended that work. There was a dam built by me. The dam was a part of the road. It was just east of the rig. That was necessary in order to make a decent road out of it. I was supposed to be in charge of the men on the place there.

Q. Why didn't you start building the rig?

A. I knew nothing about it.

Q. Do you know of any effort made to get rig-builders?

A. Just from what I hear, what people tell me.

The rig-building crews were there at that time. I was not familiar with the water conditions around that particular territory at that time. It was difficult to get water there at that time. I had been dressing tools for the Brookshire. I had been dressing tools for them and I had been promised a job as a driller. That was why I went to work at this place. I don't think Mr. Elliott ever spoke to me about coming to work as a driller. Mr. [301] Butler asked me if I wanted to go on the job and go to work for them. He told me they were going to drill. I can't just tell the conversation between Mr. Butler and myself, but he asked me if I wanted to go to work for him at drilling, and he told me where he was going to drill a well. He told me they expected to get at it as soon as possible. I don't remember that he told me what was delaying him.

(Testimony of F. F. Best.)

Redirect Examination.

(By Mr. HALL.)

There was no incident that happened on this land by which I fix the date of my arrival there, except what I have said in regard to working for the Brookshire Oil Company.

Recross-examination.

(By Mr. PRINGLE.)

This well was drilled to about 2100 feet while I was there.

Redirect Examination.

(By Mr. HALL.)

They did not find oil all the way down from the 500-foot depth. It is hard to tell how many stratas of oil I found; I don't know. It was not left as a completed oil well at the 2100-foot depth. We backed up and produced from a higher sand. They produced from a depth of 800 feet. I don't know what time they produced from the 800-foot depth. They did this after I was gone.

Recross-examination.

(By Mr. PRINGLE.)

While I was there they went down 800 feet and weren't satisfied with the quantity of oil, and they kept on drilling and went down 2100 feet.

Redirect Examination.

(By Mr. HALL.) [302]

I don't know how many producing wells there are on the property.

Testimony of R. L. Davis, for Plaintiff.

R. L. DAVIS, a witness called on behalf of the plaintiff, having first been duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

I reside at Bakersfield, California. I am a clerk. I have been living in Bakersfield five months. I was living in McKittrick in 1909. I was a cook at that time. I know where the northwest quarter of Section 15, Township 31, Range 22, is. I learned where that land was located the latter part of October or the first of November. I was employed to go there as a cook through Mr. Albert Baker. There were about eight men there when I arrived. I knew Fred Best and Montgomery. There were no buildings there when I arrived. I stayed there until about the 20th of December. I should judge the buildings were erected upon the property around the 15th of November, something like that, the 10th. Mr. Henry did that work. In the meantime I lived under a lot of boards. I was cooking while I was living under the boards. During that time I should judge there were ten or twelve or fifteen men there at different times. When I went there there was no oil derrick there at all; the material was on the ground. Mr. Henry and the men afterwards came and erected the derrick while I was there. The well had been spudded in when I left in December. I do not remember the exact date of spudding in.

(Testimony of R. L. Davis.)

Cross-examination.

(By Mr. WEIL.)

The material that I found on the ground at the time I got there was the material that was used for building the rig. I do not [303] remember when Mr. Dunn's men came on there. I remember Mr. Henry working there. I remember Mr. Best. He was one of the drillers. I should say I went there about November 1st. At other times I have stated different dates. My best recollection at this time is that it was November 1st. There has been nothing happened to refresh my recollection. These men that I found on the land when I went there were supposed to be watchmen, in the first place, but they were digging assessment holes, cutting sagebrush, and building roads. They were at work most of the time. I couldn't say how many crews were working there. I don't know whether they were crews or not. You can call them crews. They were on there all the time, day and night. Mr. Maxwell paid me when I left. I believe he was in charge of the operations on the lease. I do not remember the name of the company. There was difficulty in getting rig builders at that time. The water conditions around there were very poor. [304]

Testimony of Olive C. Gebauer, for Plaintiff.

OLIVE C. GEBAUER, a witness called in behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

I reside in San Francisco, California. At one time I lived in Los Angeles. I lived in Los Angeles during the years 1907 and 1908. At that time I was employed as a bookkeeper and cashier by Strong & Dickinson. The firm was composed of Mr. Frank R. Strong and George W. Dickinson. They were engaged in the real estate brokerage business. During that time we had two locations and I don't remember which place we were located just at that time. It was either 147 or 149 South Broadway, Los Angeles. During the years 1907 and 1908 I was qualified as an entryman under the mineral land laws of the United States as to citizenship and age. I am the O. C. Gebauer whose name appears upon a notice of location of a placer mining claim which is described as the Zee No. 8, embracing the northwest quarter of Section 15, in Township 31 South, Range 22 East, M. D. B. & M., and which is recorded in Book 71 of Mining Records at page 8, Kern County, California. I signed my name to two notices. I presume that is a copy of one of them. I don't remember the exact date, or year, or hour that I signed my name to these notices. I know that it was along, I think, just before the first of the year, 1908. I don't remember who asked me to sign the notices, but these various

(Testimony of Olive C. Gebauer.)

men whose names you have read from the location notice, a number of them were locating this land and they asked me to locate it for them. They asked me to locate it for them. I don't think I can give you the language they used when they asked me to locate the land [305] for them because I don't remember; that is a long time ago. I don't believe I could give the substance of the conversation that I had with these men. I don't remember who it was that asked me. I can't say that I understood the mining laws of the United States at that time. I don't remember whether they explained them to me at that time or not. I don't remember very much in connection with it. I don't remember which one of these gentlemen it was who asked me to locate this land for them. I think possibly it was some of the men whose names appear with me on this location notice. I think possibly it was some of them, because while there were others interested, those were the ones particularly that—I don't remember how many location notices I signed at the time but I remember that there were several; there were a number. I may have known at the time but I don't remember now how many locations of mining claims would be made upon which my name would appear as a locator. I don't remember now whether I knew at the time what interest I would have in any locations upon which my name would appear as a locator.

Q. Was any explanation made to you at that time by these gentlemen as to what your interest would or

(Testimony of Olive C. Gebauer.)

might be in these locations?

A. Well, I didn't—I simply located it for them; I didn't figure I had any interest myself personally.

Q. Were you asked to advance any money towards making these locations? A. No.

Q. Were you asked to advance any money towards the development of the lands after they were located?

A. No; I was not. [306]

Q. At the time you signed these location notices, did you have any intentions then to advance any money towards the development of these lands?

A. No.

I knew Mr. L. W. Andrews. I think I knew Mr. George C. Haldeman. I knew Mr. Frank R. Strong and Senator Stephen W. Dorsey. Senator Dorsey is dead. I knew Mr. Wallace D. Dickinson. He is dead. He was not a member of the firm of Strong & Dickinson. He was with the firm as an agent on a commission basis. He was connected with the firm in a business way. I was acquainted with Mr. Warren F. McGrath. I knew Mr. George W. Dickinson.

Q. Now, Miss Gebauer, the records of Kern County also disclose that there is therein recorded a deed in Book 217, page 62 of the records of Kern County, by which B. Adams, L. W. Andrews, A. W. Casey, N. G. Casey, W. P. Casey, Wallace D. Dickinson, George W. Dickinson, Stephen W. Dorsey, L. B. Dorsey, M. Z. Elliott, O. C. Gebauer, F. J. Haldeman, George C. Haldeman, G. A. Horn, Addison C. Macon, Henry L. Musser, Warren J. McGrath, H. R. Mc-

(Testimony of Olive C. Gebauer.)

Donald, J. E. McDonald, Albert G. Shaw, and Frank R. Strong as parties of the first part, conveyed to Frank R. Strong and M. Z. Elliott, parties of the second part, 207 placer mining locations in the State of California, among which was the claim described as the Northwest quarter of Section 15 in Township 31 South, Range 22 East, M. D. B. & M., commonly known at the Zee placer mining claim No. 8. I notice that the name of O. C. Gebauer appears as one of the makers or grantors in this deed which was dated March 4, 1909, and appears to have been acknowledged before James B. Hobbs, a notary public in and for Los Angeles County, State of California. Are you the same [307] O. C. Gebauer who signed that instrument?

A. Well, I presume so, if that is the description.

I did not receive any compensation for the execution of that document. I don't remember now at all under what circumstances I executed that instrument. Someone must have asked me to sign it, of course. I don't remember of any explanation or statement that was made to me at the time I was asked to sign it. I did not receive anything of value in consideration of the execution of this instrument. I did not demand of anyone anything of value for the execution of this instrument. I have not received since its execution any consideration whatever for its execution. The instrument describes the grantees, Frank R. Strong and M. Z. Elliott, as trustees. At the time of the execution of this instrument I did not make any declaration as to the trusteeship which was

(Testimony of Olive C. Gebauer.)

apparently attempted to be created by this instrument. I don't remember having made any such declaration, either verbally or in writing. Mr. Frank R. Strong, who is one of the grantees in the deed you have just referred to, was the same Frank R. Strong who was a member of the firm of Strong & Dickinson. I was acquainted with Mr. M. Z. Elliott. He was one of the gentlemen that came in there in regard to the locating of this land; that is about all I know about him. He was a frequent visitor about the office of Strong & Dickinson about the time this transaction occurred. I don't remember that Mr. Elliott ever consulted with me regarding the making of these locations. I don't remember that he ever consulted with me in regard to making the deed of March 4, 1909.

Q. At any time after you executed this deed of March 4, 1909, did Mr. Strong or Mr. Elliott make any declaration to you [308] either in writing or verbally, as to the trusteeship which was apparently imposed upon them by this conveyance of March 4, 1909?

A. I don't remember anything in connection with it at all. I must have signed the deed; but I don't remember anything in regard to any conversation about it.

Q. At the time you signed the deed, did you have any interest in any of these lands that you were deeding away?

A. I didn't have any financial interest in it at all.

Q. Were you promised any benefits by reason of

(Testimony of Olive C. Gebauer.)

having executed this instrument? A. No.

Q. Did you expect any benefit?

A. No; I did not.

Q. Did you expect to receive anything of value by reason of having signed it? A. No.

Q. The records of Kern County further disclose that there is therein recorded in Book 217 of Deeds, page 83, Kern County Records, an instrument or deed which purports to have been executed on May 4, 1909, between Frank R. Strong and M. Z. Elliott, trustees, parties of the first part, and British-American Oil Company, a corporation organized and existing under the laws of the State of California, party of the second part, whereby the parties of the first part, in consideration of the sum of \$50 conveyed to the British-American Oil Company the 217 placer mining claims therein described, among which is the claim known as the Zee No. 8, embracing the north-west quarter of Section 15, Township 31 North, Range 22 East, M. D. B. & M.

The COURT.—What is the date of that instrument?

Mr. HALL.—May 4, 1909. [309]

Q. Were you consulted in any way about the conveyance of these properties by Strong and Elliott to the British-American Oil Company?

A. No; I don't remember anything in connection with it at all.

Q. Was any request made by any of the parties to that indenture of you for your consent to the execution of the instrument? A. I don't remember.

(Testimony of Olive C. Gebauer.)

Q. Was there any declaration made by any of the parties to you as to the purpose for which that instrument was executed?

A. No, I don't remember.

I have never been a stockholder in the British-American Oil Company. I have had no relations whatever with that corporation. I don't now claim any interest in the Dominion Oil Company. I have never been a stockholder of that company. I don't now and have never claimed any interest in the Bankline Oil Company and have never been a stockholder in that corporation. I have no partnership agreement by which I am to derive any benefits from the north half of this quarter-section of land through any agreement with Mr. Barneson or Mr. Walker. I suppose I had an interest in the Northwest quarter of Section 15, Township 31, Range 22, after I located it; I suppose, until I deeded it to somebody else; but I haven't claimed any financial interest in it. I have never derived any benefits of any sort from the location of this land as the Zee No. 8 placer mining claim. I have never demanded of anyone any interest in this land.

(By Mr. WEIL.)

I claim no financial interest in this property and I never [310] did claim any financial interest in it. When I signed these location notices I was signing them on someone else's behalf. I remember about an association being organized by Mr. Strong and his friends for the purpose of locating oil lands. There were a number of men who came in there in

(Testimony of Olive C. Gebauer.)

regard to these locations and I knew in a general way what they were doing. I knew they were locating this oil land. I don't know whether I ever knew all of the gentlemen who were interested in that or not, but I can recall a number of them. There was Mr. Strong and Mr. Dickinson, of course, Mr. Andrews and Mr. Elliott and Mr. McDonald and Roy Jones and Senator Dorsey. I don't believe I remember Senator Jones; I remember Roy Jones. I don't believe I remember Mr. Butler. I remember all of these gentlemen whom I have mentioned and some others whom I can't now recall, had gotten together for the purpose of locating some oil claims. I don't remember any of the detail of it at this time. I knew all of those whom I have named were interested in it and there were others whom I can't now recall. When I became a locator on these lands the idea was that it was for the benefit of this association consisting of the persons whom I have named, and others whom I can't recall. I was acting as an agent then and not in my own individual capacity. I so understood at the time I made the location. At the time I signed my name to that location notice I had never heard of the British-American Oil Company. I was never a stockholder, officer or director or an employee of that company. I don't remember anything in connection with the British-American Oil Company at that time. So far as I know there was no one connected with the British-American Oil Company who asked me to participate in the location of these lands. I joined in

(Testimony of Olive C. Gebauer.)

the location of these lands on behalf of this [311] association consisting of a number of gentlemen, and part of whom I don't remember, and a part of whom I have named here.

Testimony of Albert G. Shaw, for Plaintiff.

ALBERT G. SHAW, a witness called in behalf of the plaintiff, having first been duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is Albert G. Shaw. I reside at 1317 Waterloo Street, Los Angeles. I am a manager of a bakery. I have resided in the city of Los Angeles about 17 years. I was residing in Los Angeles in 1907 and '08. At that time I was a bookkeeper and cashier.

Q. The records of Kern County, California, disclose that Albert G. Shaw,—the name of Albert G. Shaw, appears upon 104 placer mining locations variously named, each numbered, but all bearing the designation "Zee No." so and so, and so and so; among them was Zee No. 52, being the South half of the Northeast quarter of Section 2, Township 29, Range 20; Zee 73, South half of the Southeast quarter of Section 10, Township 29, Range 20; Zee 53, Southeast quarter of 22, 29-20, and so on through the list. Are you the Albert G. Shaw whose name appears upon those locations?

A. Yes, sir.

(Testimony of Albert G. Shaw.)

I think I signed the original location notices. I was in Senator Dorsey's office in Los Angeles when I signed them. Mr. George C. Haldeman was secretary to Senator Dorsey. He came to me and asked me if I would take up some locations, or a location, that the senator had formed a syndicate with Senator Jones and some others. The senator was not there at the time, and I asked him, "Is it all right?" And he said, "Yes." So I have known Senator Dorsey thirty-five years, and I signed the location on that [312] account. At the time I signed it, Mr. Haldeman did not tell me what interest I would have in these locations, he didn't promise any interest, he promised me no interest whatever. At the time I signed these location notices I didn't expect to pay for the posting of the notices on the land; I just merely signed them and turned them over to them. At that time I did not expect to spend any money in the development of these lands. Neither Mr. Haldeman nor Senator Dorsey nor any of the others that I know of in this transaction ever stated to me at any time what my interest in these locations would be. There was no one there who was interested in the syndicate but Mr. Haldeman. Neither Senator Dorsey nor Mr. Haldeman ever after that told me what my interest in these locations was. I don't think I ever asked. Afterwards I got to thinking of it, and I thought if it was a success the senator might give me an interest, but there was no promise made, or no offer made, and I never spoke to him in regard to it. I don't remember any of my colocators except Mr.

(Testimony of Albert G. Shaw.)

Musser. I knew a man named B. Adams. There was a mining engineer by that name. I don't know whether or not he was a locator on any of these claims. I didn't know Mr. Lewis W. Andrews at that time. I don't know whether he was a colocator with me on these lands. I didn't know Mr. A. W. Casey or N. G. Casey. I didn't know W. P. Casey. I don't know whether he and this person you have just named were colocators with me upon any of these lands. I met Wallace D. and George W. Dickinson perhaps once, but not at this time. I might have known at the time that they were colocators with me upon some of these lands, but I wouldn't say positively that I did. I never discussed the situation with them. I knew Senator Stephen W. Dorsey. I didn't know whether he was a colocator with me upon any of these lands. I thought [313] he got up the syndicate and I was merely obliging him; that is the idea. I thought I was obliging Senator Dorsey in signing these notices. I didn't have any other interest or motive whatever than that in signing these notices; only through friendship. Just through friendship for Senator Dorsey. I knew L. B. Dorsey. She was the wife of Senator Dorsey and is dead. I didn't know whether or not she was a colocator with him upon any of these lands. I knew M. Z. Elliott. I didn't know whether he was a colocator upon any of these lands. I understood he was interested in the syndicate, whatever it was. I didn't know Miss Gebauer and G. A. Horn and didn't know whether they were colocators with me. I knew

(Testimony of Albert G. Shaw.)

Mr. Haldeman. I don't remember whether or not he signed any of the location notices with me; I wouldn't say positively in regard to it. I didn't know Addison C. Macon. I didn't know whether she was a locator with me. I knew Henry L. Musser. He is the only one I am sure of and I know he was a colocator with me. Mr. Musser was engaged in the seed business in the city. I never discussed this situation with Mr. Musser before or after I signed the location notices. I don't know Mr. Warren F. McGrath, Mr. H. R. McDonald nor Mr. J. E. McDonald. I don't know whether they were locators with me. I had just a casual acquaintance with Frank R. Strong. I don't know whether he was one of the colocators with me. I thought he was one of the syndicate, that is the impression I got. After I signed the location notice I didn't put up any money for the development of these lands. I have never received anything of value by reason of the fact that my name appears upon these 104 mining claims. I never visited these lands. I never saw them. I don't know where they are. I never made any inquiry to ascertain where those lands were, except the explanation at [314] the time, whatever it was Mr. Haldeman gave. You have shown me a deed from Albert G. Shaw and 20 other persons conveying to Frank R. Strong and M. Z. Elliott, trustees, 207 mining locations, among which are those bearing my name as one of the locators. I remember of having executed that deed. I think I executed it in Senator Dorsey's office here in Los Angeles. I

(Testimony of Albert G. Shaw.)

executed it under the same circumstances as I signed the original papers for the claims. Haldeman asked me to sign it. He explained to me why he wanted me to sign; I thought it was carrying out the original idea. I did not receive any consideration for signing it. At that time I knew Mr. Elliott fairly well and I had met Mr. Strong once, perhaps twice. Mr. Elliott and Mr. Strong are described in the deed as trustees. I don't know that either one of these gentlemen, either in writing or verbally expressed any trusteeship to me. I am a little hazy as to what the trusteeship was under which I conveyed these lands to them; and my impression is they were holding them for the syndicate that had been originally planned, started. I am only positive about two of the members of this original syndicate, Senator Dorsey and Senator Jones. I cannot say that I knew that afterwards, on May 4, 1909, Frank R. Strong and M. Z. Elliott, as trustees, conveyed these 207 claims, including the 104 on which my name appears as locator, to the British-American Oil Company. I know the British-American Oil Company was formed, but I don't—I couldn't speak positively in regard to that transaction. I can't say that I remember now that I was requested at that time to consent to the execution of this instrument. Neither Mr. Strong nor Mr. Elliott to my recollection mentioned the execution of this deed to me. I didn't receive anything of value at the time this deed of May 4, 1909, was executed by Strong and Elliott. [315] I knew by hearsay of the British-American

(Testimony of Albert G. Shaw.)

Oil Company about that time. I think Haldeman just remarked something, mentioned the name. I can't say when it was that Mr. Haldeman mentioned this name of British-American Oil Company to me; I couldn't be positive, he just mentioned it in a casual way. I can fix no time when that was. I have never derived any benefit in any way by reason of the fact that my name appeared on these 104 locations. I have never received anything of value by reason of having signed these locations or of having signed the deed of March, 1908. I have never asked anyone for anything of value because of having signed the locations and the deed. I have never been a stockholder in the British-American Oil Company. The British-American Oil Company has never paid me anything. I don't now claim any interest in the British-American Oil Company. I don't claim any interest in the northwest quarter of Section 15. I don't claim any interest in the 104 quarter-sections or parts of quarter-sections of land on which my name appears as a locator.

Cross-examination.

(By Mr. WEIL.)

Q. Mr. Shaw,— A. Yes, sir.

Q. —as I understand it then, Mr. Haldeman came to you and told you that there was an association or a *syndicate* which had been formed for the purpose of locating some oil lands and he would like to have you act on behalf of the association. Was that correct? A. He didn't say the association, exactly.

Q. Or *syndicate*? A. Senator Dorsey.

(Testimony of Albert G. Shaw.)

Q. Well, did he say that Senator Dorsey had organized a [316] syndicate? A. Yes, sir.

Q. And did you understand that the syndicate was to get the benefit of these lands that were located?

A. Yes, sir.

I was in and about Senator Dorsey's office about that time, I would drop in perhaps once a month or something like that. I wasn't a bookkeeper there. I wasn't with him at all. It was merely friendship. I had known him 35 years. At the time I might have known how many men were in the syndicate, but I am not positive. I thought Senator Jones had some interest in it. Now, that is the impression I got but I don't know. My recollection is a little vague on the whole subject. I don't know anything about Roy Jones in the transaction. I knew Roy Jones. I knew Mr. M. Z. Elliott. I thought he was interested in the syndicate. I learn now that Mrs. Dorsey was interested in the syndicate, but I didn't know of my own recollection until I came into court. Haldeman was interested. I didn't know a man named A. H. Butler. I didn't know Dr. McDonald or his sons Joe and Jim. I knew Mr. Strong; not well; I had met him. I don't remember anything about him being interested in the syndicate or association at the time. I knew Mr. Dickinson the same as I knew Mr. Strong, casually. I don't know whether he was interested in it or not. I don't know Mr. L. W. Andrews, the attorney; nor young Mr. Butler. I had met Doctor Davis. He was Mr. Elliott's partner. I believe he was at that time in some things. He

(Testimony of Albert G. Shaw.)

was interested with Mr. Elliott in business, but at that time I can't say whether I knew he was interested in the syndicate or not.

Q. Now, your present recollection of it, was there a large number of men interested in this syndicate?
[317]

A. Yes; I understood there were afterwards.

When Mr. Haldeman spoke to me about this he told me it was all right. I turned to Mr. Haldeman and asked him if this was all right for me to locate and if it was perfectly legal, if it would get me into any trouble. He told me it was all right. I signed because he explained to me it was perfectly legal for me to locate on behalf of this syndicate or association and on account of the friendship for Dorsey. I understood that I was acting in a representative capacity for these gentlemen and not for my own individual personal benefit.

Redirect Examination.

(By Mr. HALL.)

Q. When you say that Senator Dorsey and Dickinson, and these other people, were interested in this syndicate, and Mrs. Dorsey was interested in this syndicate, in what way do you mean they were interested.

A. Well, I didn't know at the time, as I state, Mrs. Dorsey was in it at all, but I knew Dorsey and his friends had got up a syndicate.

Q. Well, you mean that they were interested in these locations, or that they were interested financially in this syndicate?

(Testimony of Albert G. Shaw.)

A. I thought that the location was gotten up for a company which they might form later.

Q. Which they might form later? A. Yes.

Q. And did you hear later of the formation of any company?

A. Well, I think Haldeman told me once afterwards that this British-American—whatever you call it—was part of the result.

Q. Was the company that you had reference to, or that you understood was to be formed?

A. Yes; just hearsay. [318]

Q. Mr. Haldeman told you that?

A. I believe—yes; at least I heard it in Dorsey's office.

Q. You heard it in Senator Dorsey's office?

A. Yes.

Testimony of Roy Jones, for Plaintiff (Recalled).

ROY JONES, recalled in behalf of the plaintiff, testified further as follows:

Direct Examination.

(By Mr. HALL.)

My name is Roy Jones. I reside in Los Angeles. I am more or less retired now; I am a walnut rancher. I know of a corporation known as the British-American Oil Company. I am a stockholder and officer of that corporation and I am secretary and treasurer and one of the directors of the corporation. I have occupied the position of secretary and treasurer almost all the time since the corporation was organized. There was an intermission when I

(Testimony of Roy Jones.)

was away, when I was not secretary, but most of the time. I would like to correct my testimony. I have not been secretary and treasurer all the time since the corporation was organized, but since we took it. It was organized long before I was connected with it. I think it was organized in the summer of 1907. I became interested in the corporation in the latter part of January or somewhere along the first of February, 1908. At that time I had ten shares transferred to me and became a director. There were five directors who resigned, or some of them resigned, I think, and their stock was transferred; their individual stock was not transferred, but was cancelled and turned in, and supposed to be transferred, but the transaction was never entirely completed; that is, it was never issued.

I have the minute-books of the British-American Oil Company here. [319]

Q. May I see them, please?

(Witness produces book.)

Mr. HALL.—Let the record show that the witness, in response to my question, produces a bound book, which bears upon a red label on the outside the words “Minutes B. A. O. Co.”

I got possession of this book when I first became secretary. I have forgotten just when that was. I was not the secretary originally. It was turned over to me by my predecessor as the minute-book of the British-American Oil Company. I have kept it in my custody and under my control whenever I was

(Testimony of Roy Jones.)

secretary. I now produce it as the original book of the corporation.

Mr. HALL.—May it please your Honor, I desire to offer and read in evidence the minutes of the first meeting of the stockholders of the British-American Oil Company, found upon pages 1 and 2 of the book produced and identified by the witness, which are as follows:

“Aug. 30, 1907.

MINUTES OF THE FIRST MEETING OF
THE STOCKHOLDERS OF BRITISH-
AMERICAN OIL COMPANY.

Pursuant to due notice given to each and all of the stockholders of British-American Oil Company a meeting of the stockholders of said Company was held at the office of Columbia Trust Company in the City of Los Angeles, California, on Friday, August 30, 1907, at 9 o'clock A. M. for the purpose of considering and adopting by-laws for said corporation and transacting any and all other business which may come before said meeting.

“There were present at said meeting the following stockholders to-wit:

“A. H. Butler, Wm. Z. McDonald, E. E. Cole, A. H. Butler, Jr., and Henry Jones Thaddeus, being the owners and holders of all of the subscribed and all of the issued capital stock of said corporation.

“Upon motion duly seconded and carried E. E. Cole was elected chairman and Wm. Z. McDonald was elected secretary of the meeting.

“The chairman reported that the Articles of In-

(Testimony of Roy Jones.)

corporation of the Company had been duly filed in the office of the County Clerk of Los Angeles, County, California and in the office of the Secretary of State of the State of California, and that certificate of incorporation had [320] been duly filed by said secretary of state and a certified copy of the articles of incorporation refiled with the county clerk of Los Angeles County.

“A book of by-laws was exhibited and read by the stockholders and upon motion duly seconded and unanimously carried the by-laws were adopted as the by-laws of this Company.

“Upon Motion duly seconded and carried the directors mentioned in the Articles of Incorporation were declared to be directors of the Company to serve until the next annual stockholders meeting and until their successors were elected and qualified.

“Upon motion duly seconded and carried the meeting was adjourned.

“WM. Z. McDONALD,

“Secy.”

The COURT.—Let me ask a question there. Were any of these stockholders alleged locators?

Mr. HALL.—Not of those that I have just mentioned?

The COURT.—That is what I mean.

Mr. HALL.—That will come a little later, your Honor.

The COURT.—There are so many names I can't keep them separate in my mind.

Mr. WEIL.—Just for your Honor's information,

(Testimony of Roy Jones.)

all of these men that were interested in this thing were ultimately interested in the whole transaction.

Mr. HALL.—Yes, Mr. Butler and Mr. William Z. McDonald.

Mr. WEIL.—Yes.

Mr. HALL.—They became stockholders and continued as stockholders of the British-American Oil Company.

Mr. A. H. Butler was an oil man. Mr. William Z. McDonald was an oil operator. Mr. McDonald afterwards became and continued to be a stockholder of the British-American Oil Company after I had become interested in the company. Mr. E. E. Coe did not continue to be a stockholder in the company after I became interested. I think Mr. A. H. Butler, Jr., continued to be a stockholder in the company after I became interested. I will have to qualify that. The stock was not issued to him until much later. [321] I never saw Henry Jones Thaddeus. I understood he was a man that was financing an oil deal,—an artist; I never met him. I always understood he was an artist, a man with some money. It sounds like a paradox. He never had any connection with the corporation after I became connected with it. I heard he was an artist with money.

Mr. HALL.—That is almost as anomalous as a lawyer with money. I read now from pages 3 and 4 of the minute-book of the British-American Oil Company, as follows:

“Aug. 30, 1907.

“MINUTES OF THE FIRST MEETING OF
THE BOARD OF DIRECTORS OF THE
BRITISH-AMERICAN OIL COMPANY.

“Pursuant to notice given to each of the directors of said company a meeting of the Board of Directors of the British-American Oil Company was held at the office of Columbia Trust Company in the City of Los Angeles, California, at 9:30 o'clock A. M. of Friday August 30, 1907, for the purpose of certifying to the By-laws of the Company electing officers for the ensuing year and transacting any and all business affecting said Company to come before said meeting.

“There were present at said meeting the following directors:

“Albert H. Butler, E. E. Cole, Wm. Z. McDonald, Henry Jones Thaddeus and A. H. Butler, Jr., being all of the directors of the Company.

“On motion duly seconded and carried E. E. Cole was elected president of the Company; being present accepted the office and assumed its duties.

“Upon motion duly seconded and carried Wm. Z. McDonald was elected secretary of the Company and being present accepted the office and assumed its duties.

“On motion duly seconded and unanimously carried by-laws adopted at the previous meeting of the stockholders of the Company were duly ratified as the by-laws of the Company and it was resolved that the same be certified by majority of the Board

(Testimony of Roy Jones.)

of Directors and by secretary of the corporation as required by law.

“A recess having been taken and the meeting again called to order and all the directors being present the secretary reported that the by-laws adopted by the stockholders and ratified by the directors had been duly certified by the majority of the Board of Directors and by the Secretary of the Company.

“Upon motion duly seconded and carried the seal, impress of which is affixed to this page of the minutes of said meeting, was adopted as the official seal of said corporation. [322]

“Upon motion duly seconded and carried, certificate of stock, a copy of which is affixed to this page of minutes of said meeting was adopted as form for certificate of stock to be used and issued by this corporation.

“Upon motion duly seconded and carried the secretary was instructed to secure all books and stationery for corporation.

“Upon motion duly seconded and carried the meeting was adjourned.

(Seal)

WM. Z. McDONALD.”

Mr. HALL.—The page bears the impress of the corporate seal, and attached thereto by wire clip is a sample of stock certificate.

Mr. PRINGLE.—If your Honor please, I think on behalf of the Dominion Oil Company I would like to object to any of these matters which took place prior to the location of the oil claims. What was

(Testimony of Roy Jones.)

done with this company before that time is immaterial.

The COURT.—Very well.

Mr. HALL.—I want to show the condition.

Mr. PRINGLE.—I will take the Court's ruling.

That is all.

The COURT.—Yes.

Mr. PRINGLE.—And I object also to matters which transpired with the company subsequent to the lease to the Dominion as being immaterial.

Mr. HALL.—Your Honor will observe the minutes I just read are found upon pages 3 and 4 of the record. Now, I read from page 5 of the record, as follows—

Mr. WEIL.—What date are those minutes?

Mr. HALL.—This is February 3, 1908. The last ones were—

Mr. WEIL.—Do you mind indicating, for the benefit of the record here, that you have read the entire record of the corporation up to that time, and this is the entire record of the business of the corporation as disclosed by the minutes? [323]

Mr. HALL.—Yes, I want to get to that.

The COURT.—Up to the 1st of January, 1908?

Mr. L. W. ANDREWS.—The 1st of February, 1908.

Mr. HALL.—The 1st of February, 1908. The minutes I have read are all the minutes I find in the book of this corporation up to January 1st, 1908.

Mr. L. W. ANDREWS.—February 1st.

Mr. PRINGLE.—February 3d is the date.

(Testimony of Roy Jones.)

Mr. HALL.—These minutes end on page 4. I now read from page 5 as follows, to wit:

“MINUTES OF ANNUAL MEETING OF THE
STOCKHOLDERS.

“We, the undersigned, being the holders and owners of all of the subscribed and issued stock of the British-American Oil Company, hereby severally acknowledge receipt of due notice of the time and place of the holding of the annual meeting of the stockholders of said Company, and we hereby consent to the holding of said meeting at 2 o'clock P. M. on Monday, February 3d, 1908, being the first Monday of February of this year, at Room 721 Los Angeles Trust Building, Northeast corner of Second and Spring Streets, in the city of Los Angeles, California, at which meeting the Board of Directors shall be elected for the ensuing year and any and all business transacted which may properly come before said meeting.

STEPHEN W. DORSEY.

M. Z. ELLIOTT.

WM. Z. McDONALD.

FRANK R. STRONG.

ROY JONES.”

I recognize my own signature to these minutes. I have seen the signatures of the others very often. I would say that these are the signatures of several men attached to these minutes. They are the signatures of Stephen W. Dorsey, M. Z. Elliott, William Z. McDonald, Frank R. Strong, and Roy Jones.

(Testimony of Roy Jones.)

Mr. WEILL.—They were all interested in this syndicate. That was the time this syndicate took this corporation over.

The COURT.—Elliott is one of the trustees?

Mr. HALL.—Elliott is one of the trustees, and Frank R. Strong [324] is another of the trustees.

The COURT.—And you have Dorsey also?

Mr. HALL.—And McDonald, William Z. McDonald, M-c-D-o-n-a-l-d,—I don't want to get another play on words here,—and Frank R. Strong and Roy Jones.

Mr. PRINGLE.—Now, enter the arch conspirators.

Mr. HALL.—Now, the scene shifts,—on the surface.

Mr. HALL.—I now offer and read in evidence that portion of the minutes from the book identified by the witness which are found on pages 6 and 7 of the record as follows—I find pasted at the top a letter, part of which is gone. The general letterhead is “A. H. Butler & Company, Investments, 20 Broad Street, New York”:

“New York, October 21st, 1907.

“British-American Oil Company,

“Los Angeles, California.

“Gentlemen: I hereby tender my resignation as a director in your company.

“Yours very truly,

“A. H. BUTLER.”

The typewritten minutes of the meeting I read as follows:

“Feb. 3, 1908.

“Stockholders.

“Pursuant to due notice given to all the stockholders of the British-American Oil Co., and in further pursuance of the foregoing consent of the stockholders and owners, the meeting of the British American Oil Co. was held at 2 o'clock P. M. on Feb. 3d, 1908, at Room 721 L. A. Trust Building, north-east corner of Second and Spring Streets, Los Angeles, California.

Present: Stephen W. Dorsey.....10 shares
 Roy Jones10 shares
 M. Z. Elliott.....10 shares
 Wm. Z. McDonald.....10 shares
 Frank R. Strong.....10 shares

being all of the subscribed and issued stock of the company;

“Whereupon, the following business was transacted:

“Stephen W. Dorsey was elected Chairman; M. Z. Elliott was elected Secretary of the meeting. [325]

“On motion of Mr. McDonald, seconded by Mr. Strong, the following resolution was adopted:

“‘WHEREAS, Elmer E. Cole, A. H. Butler, Sr., and A. H. Butler, Jr., and H. J. Thaddeus, heretofore directors of this company, have each of them tendered their resignation as a member of the Board of Directors, and have each of them ceased to be stockholders of this company;

NOW, THEREFORE, RESOLVED, that the office of each of said Directors be, and the same is, hereby declared to be vacant,’

which said resolution was unanimously carried.

“On motion of Mr. Jones, seconded by Mr. McDonald, the following resolution was adopted:

“‘RESOLVED, that we proceed with the election of five Directors to act as Directors for this company for the ensuing year and until their successors are elected and qualified,’

“Feb. 3-1908.

“Stockholders Continued.

which motion was unanimously carried.

“Nominations for Directors being in order, Stephen W. Dorsey, Roy Jones, M. Z. Elliott, Frank R. Strong, and Wm. Z. McDonald were duly placed in nomination as Directors of this company for the ensuing year. There being no further nominations, on motion, duly seconded and carried, the nominations were closed.

“On motion of Mr. Jones, seconded by Mr. Strong and unanimously carried, the Secretary was instructed to cast the ballot of all of the stock represented at this meeting for each of the foregoing gentlemen as and to be a director of this company for the ensuing year.

“The secretary reported that he had cast the ballot of the entire stock represented, to wit: 50 shares of stock, being all of the subscribed and issued stock of the company, for each and all the following named gentlemen to be directors of the company for the ensuing year, to wit:

For Stephen W. Dorsey.....50 votes
 For Roy Jones50 votes
 For M. Z. Elliott.....50 votes
 For Frank R. Strong.....50 votes
 For W. Z. McDonald.....50 votes

“WHEREUPON, the Chairman declared the above-named gentlemen, and each of them, elected Directors of this company for the ensuing year.

“On motion duly seconded and carried, the meeting of the stockholders took a recess until 4 P. M. of this date.

“M. Z. ELLIOTT,
 “Secretary.”

Mr. HALL.—I read from page 8 as follows:

“WE, the UNDERSIGNED, being all the Directors of the British-American Oil Co., hereby consent to the holding of a meeting of the said Board of Directors at 3 o'clock P. M., Monday, Feb. 3d, 1908, at room 721 L. A. Trust Building, north-east corner of Second and Spring Streets, Los Angeles, California, for the purpose of electing officers for the ensuing year and [326] transacting any and all other business which may come before said meeting.

“STEPHEN W. DORSEY,

“M. Z. ELLIOTT.

“WM. Z. McDONALD.

“FRANK R. STRONG.

“ROY JONES.”

“Feb. 3, 1908.

“Pursuant to the above consent and all the Directors being present, the meeting of the Board of

Directors of the British-American Oil Co. was held at the time and place therein specified, and the following business was transacted:

“On motion of Director Jones, seconded by Director Dorsey and unanimously carried, Director Elliott was elected President for the ensuing year.”

Mr. HALL.—I read from page 9 of the same record:

“Feb. 3, 1908—Continued.

“On motion of Director Strong, seconded by Director McDonald, Director Jones was elected Vice-President and Treasurer.

“On motion of Director Dorsey, seconded by Director Elliott, Director Strong was elected Secretary for the ensuing year.

“On motion duly seconded and unanimously carried, George C. Haldeman was elected Assistant Secretary of the Company to perform all the duties of the Secretary in his absence.

“Each of the foregoing officers being present, accepted and assumed the duties of the office.

“On motion, duly seconded and carried, Room 721 L. A. Trust Building, northeast corner of Second & Spring Streets, Los Angeles, California, was selected to be the office of the Company.

“On motion of Director Jones, Seconded by Director Dorsey, the President and Secretary and Director McDonald were elected as an Executive Committee with full power to act in all matters concerning the affairs of the company, in absence of the meet-

ing of the Board provided, however, such action shall in all cases be unanimous.

“On motion of Director Dorsey, seconded by Director Jones, the following resolution was carried by the vote of Directors Dorsey, Jones and McDonald, Directors Strong and Elliott being present but not voting, to-wit:

“WHEREAS, this company has received the following offer from Frank R. Strong and M. Z. Elliott, Trustees:

“ ‘Los Angeles, California, Feb. 3–1908.

“To the British-American Oil Co.,

“Los Angeles, Cal.

“Gentlemen:

“We hold as Trustees, for our principals, with full authority to make disposition thereof, and subject to the conditions hereinafter stated, 207 oil claims, or placer mining claims in Kern County, Cal., and 25 oil claims or placer mining claims in Fresno County, California, covering an aggregate of about 32,000 acres, and [327] being the same claims and property conveyed to us by those two certain deeds dated January 31, 1908, from B. Adams et al. and Wm. Z. McDonald et al., which said property has been conveyed to us with the understanding that we would convey, or cause to be conveyed, claims embracing 640 acres of said land to each of the following persons, to wit:

To Frank R. Strong.....	640 acres,
To Wm. Z. McDonald.....	640 acres,
To Stephen W. Dorsey.....	640 acres,

To John P. Jones.....640 acres,
To M. Z. Elliott.....640 acres,
upon payment to us of the consideration of \$1.00
from each of said persons, and no other or further
consideration to be paid therefor. Said land to be
selected from said property by said above-named
gentlemen, such selection to be in writing, signed by
all of said persons.

“It was further the understanding that from the
first proceeds of the sale of any part of the remain-
ing portion of said property we should cause to be
paid to the above-named individuals the sum of
\$2499.90 in the proportions hereinafter specified.

“Now, therefore, we hereby make you the follow-
ing proposition:

“We will convey to you all of our right, title and
interest in, to and respecting each and all of said
232 placer mining claims in Kern and Fresno Coun-
ties, California, for and in consideration of the issu-
ance to us, or on our order, of 249,950 shares of the
capital stock of the British-American Oil Company,
as fully paid up, and upon the further agreement
upon your part to convey (in ink) claims covering
(typewriting) 640 acres of said land to Stephen W.
Dorsey, and to convey claims covering 640 acres of
said land to John P. Jones, and to convey claims
covering 640 acres of said land to M. Z. Elliott, and
convey claims covering 640 acres of said land to
Frank R. Strong, and further to convey claims cov-
ering 640 acres of said land to Wm. Z. McDonald
(making total amount to be conveyed by you to said

parties 3200 acres) upon the payment to you of the sum of \$1,00 from each of said parties and without exacting any further consideration, said conveyance to be made to said parties of such land as they shall select from the property to be conveyed to you by us hereunder, said selections to be in writing and to be signed by all of said parties.

“And for the further consideration of your agreeing that out of the first proceeds received from the sale of the remaining portion of the said property to be conveyed to you, you shall and will pay the above named parties amounts as follows, to-wit:

To Frank R. Strong.....	\$1000.00
To Stephen W. Dorsey.....	\$ 500.00
To John P. Jones.....	\$ 999.90
To W. Z. McDonald.....	\$
To M. Z. Elliott.....	\$

[328]

“Your acceptance of the foregoing offer and agreement to carry out the terms thereof, in the form hereinbelow set forth, will constitute this a good, valid and binding contract for the purposes herein set forth.

“(Signed) FRANK R. STRONG,

“(Signed) M. Z. ELLIOTT,

“Trustees.”

“Los Angeles, Cal., Feb. 3, 1908.

“Messrs. Frank R. Strong and M. Z. Elliott.

“Gentlemen:

“We hereby accept the above and foregoing proposition and agree to all and singular the terms and

provisions thereof, and constitute the same a good, valid and binding contract for the purposes herein set forth.

“Yours truly,

“BRITISH-AMERICAN OIL CO.

“By _____,

“Its Vice-President.

“By _____,

“Its Asst. Secretary.”

“AND WHEREAS, The deeds in said offer referred to have been exhibited to and examined by this Board of Directors, and the Board are familiar with the character and location of the placer mining claims and properties in said offer and said deeds referred to and described; and,

“WHEREAS, It is deemed for the best interests of this company that this company should purchase said properties, for the consideration in said offer named,

“NOW, THEREFORE, BE IT RESOLVED, That said offer be, and the same is, hereby accepted and all and singular the terms thereof agreed to; and,

“RESOLVED, Further that the Vice-President and the Assistant Secretary of this company be, and they are, hereby authorized, empowered and directed for and on behalf of this company, in its name, under its seal and as its act and deed, to make written acceptance of said offer in the form therein set forth.

“RESOLVED, Further that upon execution and delivery to this company of deed conveying all the right, title and interest of said Frank R. Strong and

said M. Z. Elliott, Trustees, in and to the property described in said offer, that the Vice-president and Assistant Secretary of this company be, and they are, further authorized, empowered and directed to issue and deliver to said Frank R. Strong and M. Z. Elliott, Trustees, or to such persons as they may designate, 249,950 shares of the capital stock of this company, issued as fully paid up.

“RESOLVED, further that upon presentation of written selection signed by Frank R. Strong, Wm. Z. McDonald, Stephen W. Dorsey, John P. Jones and M. Z. Elliott, designating the properties aggregating 3200 acres, which are to be conveyed to said individuals, the Vice-president and Assistant Secretary of this company shall, for and on behalf of this company, and in its name, under its seal and as its act and deed, execute and deliver to said persons, severally, proper deeds conveying the [329] placer mining claims covering the properties *to* specified by said written selection.

“RESOLVED, further, that from the first proceeds received from the sale of the remaining portion of said property, covered by said offer, or any part thereof, there shall be paid to the persons specified in said offer, the several amounts as set forth in said offer, the aggregate amount of such items being \$2499.90.

“On motion duly seconded and carried, the meeting of the Board of Directors was adjourned until 2 o'clock Tuesday, Feb. 11, 1908.

“FRANK R. STRONG,

“Secretary.”

Mr. HALL.—I read from page 14 of the minutes as follows:

“Feb. 3—1908.

“MINUTES OF ADJOURNED STOCKHOLDERS
MEETING.

“The adjourned meeting of the stockholders of the British-American Oil Co. was held at 4 o'clock P. M. February 3rd, 1908. All the stockholders present.

“On motion of Director Jones, seconded by Director Dorsey, and unanimously carried, the following resolution was adopted:

“WHEREAS, the minutes of the meeting of the Board of Directors as held on this day and recorded on pages 8 to 14 of the Minute Book of this company, have been read and are understood by all the stockholders of the company; and,

“WHEREAS, it is deemed for the best interest of the company that the offer, a copy of which is set forth on pages 9 to 12 on the minute book of this company, should be accepted and the property therein offered to be conveyed, should be acquired by this company for the consideration therein specified,

“NOW, THEREFORE, BE IT RESOLVED, that the acts of the directors in accepting said offer be, and the same are, hereby approved;

“RESOLVED, further that all and singular the acts of the Board of Directors as herein recorded on pages 8 to 14 of the minutes of this company be, and the same are, hereby ratified and approved.

“That the undersigned, being all the stockholders of the British-American Oil Co., hereby certify that we were present at the foregoing adjourned stockholders’ meeting and joined in the vote ratifying the acts of the Board of Directors, and we hereby severally ratify and approve all and singular the acts of the Board of Directors recorded on pages 8 to 14 of the minutes of this company.”

Mr. HALL.—I read now from page 15 of the minute-book, which bears the date at the top April 26, 1909:

“April 26, 1909. [330]

MEETING OF THE BOARD OF DIRECTORS OF THE BRITISH AMERICAN OIL COMPANY, held at the office of the company at 10:30 A. M., April 26, 1909, pursuant to notice, (in ink) in writing given to each director

“Present at meeting—Director Elliott in the chair, and Directors Jones, McDonald and Strong; absent Director Dorsey.

“On motion duly seconded and carried the reading of the minutes of the last meeting were dispensed with.”

Mr. HALL.—I also offer the minutes found on page 16, under date of April 26, 1909:

“April 26, 1909.

“MEETING of the BOARD OF DIRECTORS of THE BRITISH AMERICAN OIL COMPANY, held at the office of the company at 10:30 a. m. April 26, 1909, pursuant to notice, (in ink) in writing given to each director.

“Present at meeting—Director Elliott in the chair, and Directors Jones, McDonald and Strong; absent Director Dorsey.

“On motion duly seconded and carried the reading of the minutes of the last meeting were dispensed with.

“Mr. Albert H. Butler presented to the directors copy of contract between British American Oil Company as party of the first part and James C. Yancey, as second party dated April 12, 1909, for the selection and leasing by Yancey of portions of the property of this Company, on a royalty of one-sixteenth ($1/16^{\text{th}}$), together with option to purchase one or more quarter sections, as desired, which contract having been duly read and considered by the Board, the following resolution on motion duly seconded, was unanimously adopted:

“RESOLVED: That the execution by Albert H. Butler on behalf of this Company of contract dated April 12, 1909 between this Company as party of the first part and James C. Yancey as party of the second part and which contract has at this time been presented to and read by this Board of Directors, be and the same is hereby ratified, confirmed and approved.

“RESOLVED, FURTHER, that said contract be and the same is hereby ratified and constituted a contract of this Company. And,

“That the extension of time granted to Mr. Yancey for the selection of land under said contract

up to May 5, 1909 be and the same is hereby ratified and approved,

“On motion by Director McDonald, seconded by Director Jones, the following resolution was unanimously adopted:

“WHEREAS, A. H. BUTLER has negotiated a contract with James C. Yancey under which the said Yancey is to develop and operate certain of the oil lands held by this Company, and,

“WHEREAS, the said Butler under the arrangement made with him is entitled to a commission of Twenty-five per cent (25%) of all this company received or is to receive from the same Yancey under the aforesaid agreement, and, [331]

“WHEREAS, the said Butler is now engaged in negotiating arrangements with others for the taking over and operating of other of the oil lands belonging to this Company under a like arrangement as to commission,

“NOW, THEREFORE, it is resolved that the officers of this Corporation be and they hereby are authorized, empowered and directed to execute in the name and under the seal of this corporation an agreement with the said Butler transferring and conveying to him an undivided one-fourth ($\frac{1}{4}$) of all which this Company may at any time receive under the leases made to the said Yancey or his assigns and authorizing payment in money or property directly to the said Butler as the same become due and payable under the said leases.

“And the officers of this Company are further

authorized and directed to execute similar agreements from time to time, covering all the arrangements which may be entered into by this corporation for the disposal of its oil lands to people interested by the said Butler or upon arrangements negotiated by him.

“On resolution of Director McDonald, seconded by Director Jones, and unanimously carried, the Secretary and President were instructed to issue stock to the various persons entitled thereto in accordance with the contract of this company therefor, heretofore entered into.

“On motion duly seconded and carried, the meeting was adjourned.

FRANK R. STRONG,
Secretary.”

Mr. HALL.—I also offer the minutes found on page 17, under date of May 19, 1909. This refers to this particular section:

“May 19, 1909.

“SPECIAL MEETING of the BOARD OF DIRECTORS of the BRITISH AMERICAN OIL COMPANY held at the office of the Company 721 Trust Building, Los Angeles, California, at the call of the President and pursuant to notice duly mailed to each director, May 19th, 1909.

“Present M. Z. Elliott, in the chair, W. Z. McDonald, Frank Strong, and Roy Jones. Absent S. W. Dorsey.

“The reading of the minutes of the preceding meeting was postponed.

“It was moved by Mr. Strong and seconded by Mr. Jones that Mr. Butler’s propositions in regard to deeding the N. W. $\frac{1}{4}$ of Sec. 15, Tp. 31 South, Range 22 East—S. W. $\frac{1}{4}$ of Sec. 34 Tp. 28 South, Range 20 East—two quarters of Sec. 33, Tp. 28 South, Range 20 East, to the COMBINATION OIL COMPANY, in exchange for one-fifth ($\frac{1}{5}$ th) of its capital stock, also his request for abstracts thereon, also his request for an option on certain other lands, be laid on the table until after the Board of Directors shall visit the ground and the Secretary is hereby directed to notify Mr. Butler of this action.

“On roll call the directors voted aye and the motion was carried.

“It was moved by Mr. McDonald and seconded by [332] Mr. Jones that the Kern County deeds be compared with the location notices and recorded. All directors voting aye, the motion was carried.

“It was moved by Mr. McDonald and seconded by Mr. Strong that all the papers of the corporation be collected and placed in the custody of the Secretary. All directors voting aye, the motion was carried.

“It was moved by Mr. McDonald and seconded by Mr. Strong that the meeting adjourn until Tuesday, May 27th 1909, at 9 o’clock a. m. All directors voting aye, the motion was carried.

“FRANK R. STRONG,

“Secretary.”

Mr. HALL.—There is another meeting on page

18, which we offer. There was nothing important in that. It just adjourned.

“May 27, 1909.

“May 27, 1909.

“Adjournment of the called meeting of May 19th, 1909 of the British-American Oil Company.

“Present: Frank Strong and Roy Jones.

“Absent: W. Z. McDonald, M. Z. Elliott and S. W. Dorsey.

“There being no quorum, those present adjourned the meeting until Thursday, June 3rd at 9:30 A. M.

“FRANK R. STRONG,

“Secretary.”

Mr. HALL.—On page 19, I read as follows, under date of June 3, 1909:

“June 3, 1909.

“June 3, 1909.

“Adjournment of the adjourned meeting of May 27th, 1909, of the British American Oil Company.

“Present: Vice-President Jones in the chair, F. R. Strong, and W. Z. McDonald.

“Absent: M. Z. Elliott, and S. W. Dorsey.

“The reading of the minutes of the preceding meetings was postponed. It was moved by Mr. Strong and seconded by Mr. McDonald that the following telegram be sent to Mr. A. H. Butler.

“‘Mr. A. H. Butler, 20 Broad Street, New York. Directors reject stock proposal—will lease to Combination quarter fifteen eighth royalty provided work begins in fifteen days.’”

Signed — BRITISH — AMERICAN — OIL —
COMPANY.

“The motion was unanimously carried.

“It was moved by Mr. McDonald and seconded by Mr. Strong that Mr. Andrews be requested to ascertain what can be done with an attorney in regard to advice on the Company’s rights and prosecuting them, if the Board so decides. The motion was unanimously carried.

“It was moved by Mr. Strong and seconded by Mr. McDonald that the Secretary’s letter of June 1st addressed to Mr. Drake authorizing a compromise on section 30 be ratified. The motion was unanimously carried.

“It was moved by Mr. McDonald and seconded by Mr. [333] Strong that the meeting adjourn until 9:30 Tuesday morning, June 8th. The motion was unanimously carried.

“FRANK R. STRONG,
“Secretary.”

Mr. HALL.—I also read in evidence the minutes of June 8, 1909, on page 20, and the minutes of June 12, 1909, on page 20;

“June 8, 1909.

“Adjourned meeting of the British American Oil Company June 8, 1909.

“Owing to the lack of a quorum, the Secretary, Mr. Strong, adjourned the meeting to June 12, 1909.”

“June 12, 1909.

“Adjourned meeting of the British American Oil Company. June 12, 1909.

“Present—M. Z. Elliott in the chair, W. Z. McDonald, Frank Strong and Roy Jones.

“Absent:—S. W. Dorsey.

“It was moved by Mr. McDonald seconded by Mr. Strong that the Secretary be instructed to write to the Interior Department for recent rulings on the developments of oil lands in regard to the rights of locators. The motion was unanimously carried.

“It was moved by Mr. Roy Jones, seconded by Mr. McDonald that the Company do its assessment work on ‘Gypsum’ in section four, and that the President be authorized to take the necessary steps. The motion was unanimously carried.

“It was moved by Mr. McDonald seconded by Mr. Strong that if upon examination the title proved good on sections ten and fifteen, that the president be authorized to use his judgment about taking steps to maintain possession, and that the same authorization be extended to any other lands of the Company where there is adjacent development. The motion was unanimously carried.

“Upon motion of Mr. Strong, seconded by Mr. McDonald, the meeting then adjourned, to meet subject to the call of the chair.

“FRANK R. STRONG.”

Mr. HALL.—I also offer the minutes of September 11, 1909, on page 21:

“Sep. 11, 1909.

“Special meeting of the Board of Directors of the British American Oil Company held at the office

of Strong & Dickinson at 10 A. M., September 11, 1909, pursuant to the call of the chair.

“Present: M. Z. Elliott in the chair, Frank Strong, W. Z. McDonald and Roy Jones.

“Absent: S. W. Dorsey.

“The Secretary read the minutes of the meeting of June 3, 1909, and the meeting of June 12, 1909, which upon motion of Mr. McDonald, seconded by Roy Jones were approved by the Board.

“The following resolution was offered by director McDonald, seconded by director Strong and unanimously passed. [334]

“ ‘Resolved that the installation of five oil rigs with equipment complete for the drilling of commercial wells upon any five eighty acre tracts mentioned and described in the selections made by Adolph J. Griet under either or all of his three contracts bearing dates respectively: Twentieth day of April, 1909; Eighth day of July, 1909, and the Fifteenth day of August, 1909, and the continuous prosecution of the work of drilling commercial wells upon such five eighty acre tracts shall be deemed and treated as a full compliance by him with the requirements of each and every of said contracts as to the wells which shall be drilled or the drilling of which shall be commenced before the first day of January, 1910, provided always that the foregoing modification of the said contracts shall not operate to in any way modify or affect the requirements of the said respective con-

tracts concerning the performance of assessment work upon eighty acre tracts included therein other than those to be drilled upon.'

"The attached resolution (affixed to page 22 of minutes) was introduced by director McDonald and seconded by director Jones and unanimously passed.

"Mr. Griet through his representative Judge Wilson W. Hoover, made the following statement namely that the acceptance of the ratification of the foregoing extension of contract is subject to his written statement that Mr. Griet will repay any expense that may be incurred before September 30, 1909 for the erection of derricks, etc. for the purpose of protecting the title to the N. W. one quarter of section 15, T. S. 31, South, Range 23 E. M. D. B. & M.

"Upon motion of Mr. Strong, seconded by Mr. Jones the meeting then adjourned subject to the call of the chair.

"FRANK R. STRONG.

"Sec'y."

Mr. HALL.—I will read the resolution which refers to those contracts, so that your Honor may have it all.

Mr. WEIL.—We object to that. There is another resolution covering this particular piece of land, and this is evidently referring to a contract on some of those other 32,000 acres. I suggest it be copied into record, if it is of any importance, and not be read.

The COURT.—Let counsel for the Government exercise his own judgment on that.

Mr. HALL.—I want to present all these matters to your Honor. I will have to read them sometime; if I don't do it now, I will have to take the time later on. [335]

The COURT.—Go ahead.

(Thereupon Mr. Hall read the resolution referred to, found on page 22 of the minute-book, as follows:)

“RESOLVED that the contract heretofore entered into by Stephen W. Dorsey, as the duly authorized agent of this Company with Adolph J. Griet, of the City, County and State of New York, under date of the Twentieth day of April, 1909, which has been read and ordered on file, subject to correction by inserting the word ‘Oil’ instead of ‘Petroleum’ in the corporate title of said Company, be and the same is hereby approved as to each and all of the terms, provisions, covenants, agreements and conditions therein contained, and to be performed by either of the parties thereto.

“And be it further

“RESOLVED that in compliance with the request of the said Adolph J. Griet if his examination of the property and selection of the respective eighty acre tracts therein mentioned, and the notice in writing of said selection if made and completed, and such notice in writing is given by him on or before the thirtieth day of September, 1909, the same shall be deemed to be, and treated as, a full compliance with

the terms and requirements of said contract in that regard. And be it further

“RESOLVED that the contract heretofore entered into by Stephen W. Dorsey, as the duly authorized agent of this Company with Adolph J. Griet of the City, County and State of New York, under date of the Eighth day of July, 1909, which has been read and ordered on file, subject to correction by inserting the word ‘Oil’ instead of ‘Petroleum’ in the corporate title of said Company, be and the same is hereby approved as to each and all of the terms, provisions, covenants, agreements and conditions therein contained, and to be performed by either of the parties thereto.

“RESOLVED that in compliance with the request of the said Adolph J. Griet if his examination of the property and selection of the respective eighty acre tracts therein mentioned, and the notice in writing of such selection, if made and completed, and such notice in writing is given by him on or before the thirtieth day of September, 1909, the same shall be deemed to be, and treated as, a full compliance with the terms and requirements of said contract in that regard. And be it further.

“RESOLVED that the contract heretofore entered into by Stephen W. Dorsey, as the duly authorized Agent of this Company with Adolph J. Griet of the City, County and State of New York, under date of the Fifteenth day of August, 1909, which has been read and ordered on file, subject to correction by inserting the word ‘Oil’ instead of

‘Petroleum’ in the corporate title of said Company, be and the same is hereby approved as to each and all of the terms, provisions, covenants, agreements and conditions therein contained, and to be performed by [336] either of the parties thereto. And be it further

“RESOLVED that in compliance with the request of the said Adolph J. Griet if his examination of the property and selection of the respective eighty acre tracts therein mentioned, and the notice in writing of said selection, if made and completed, and such notice in writing is given by him on or before the thirtieth day of September, 1909, the same shall be deemed to be, and treated as, a full compliance with the terms and requirements of said contract in that regard. And be it further

“RESOLVED that the Secretary of the Company be and is hereby authorized to amend the originals of the above named contracts held by the said Adolph J. Griet, by erasing the word ‘Petroleum’ and substituting the word ‘Oil’ in the corporate title of the said Company wherever the same appears in each and every one of the said contracts.”

Mr. HALL.—Now, I read from page 23 of the records:

“Los Angeles, Cal. Sept. 11, 1909.

“The British-American Oil Co.,

“Los Angeles, Cal.

“Gentlemen:

“Confirming my oral statement to your Board of Directors, I have to say on behalf of Mr. Adolph

Greit as his representative that the confirmation by you of the existing contracts held by him from the Company, bearing dates respectively in April 20th, 1909, June 22nd, 1909 and August 15th, 1909, are accepted by him subject to your right to erect derricks and make expenditures in order to protect the Northwest quarter of Section Fifteen (15), township 31 south, Range 23 East, and if said quarter section is included within his selection under either or any of said contracts that he will reimburse your company for any expenditures by them so made.

“Yours respectively,

“WILSON W. HOOVER.”

Mr. WEIL.—That is the land in controversy.

Mr. HALL.—That is the land in controversy. I read from page 24:

“Sep. 27, 1909.

“Special meeting of the British-American Oil Company held 11 A. M. September 27th pursuant to the call of the chair at the office of Lewis Andrews in the Union Trust Building, Los Angeles, Cal.

“Present: M. Z. Elliott in the chair, W. Z. McDonald, Roy Jones and Frank Strong.

“Absent: S. W. Dorsey.

“The reading of the minutes of the meeting of September 11th was postponed. It was moved by director McDonald, seconded by director Strong that Mr. M. Z. Elliott (The president), be empowered to negotiate a [337] lease on the S. W. $\frac{1}{4}$ of section 4, T. S. 31 South, Range 22 E., M. D. B. & M., or to protect the title to it as he may see fit. The motion

(Testimony of Roy Jones.)

was carried. All directors present voting aye on roll call.

“It was moved by director McDonald seconded by director Jones that attorney Andrews be instructed to draw a lease in favor of Geo. Dickinson for the N. W. $\frac{1}{4}$ of Section 15, T. S. 31 South, Range 22 East, M. D. B. & M., for a period of twenty-five years with perpetual pumping clause upon one tenth royalty with an option to purchase within three years, the whole or a minimum of eighty acres at \$250.00 per acre. The motion was carried. All directors present voting aye upon roll call.

“Upon motion of director McDonald, seconded by director Strong, the meeting adjourned subject to the call of the chair.

“FRANK R. STRONG,

“Sec’y.”

Mr. HALL.—I read from page 25, November 30, 1909, the minutes—

Mr. WEIL.—Now, one moment. As far as the lessees are concerned, that is the beginning of our chain of title, and it passed out of the British-American, and any further action on the part of the British-American could not be binding on the Bankline or Elliott or the Dominion Oil Company. The action of the lessor certainly would not control the lessee from that time forward, and I make that objection, and on the further ground it is immaterial and irrelevant.

The COURT.—What is the propriety of the rec-

(Testimony of Roy Jones.)

ord? What do you claim for that, made after this lease?

Mr. HALL.—To show whatever interest was yet remaining in the British-American Oil Company was handled by it as its own, and there was no reference whatever to any locators or any rights or interests other than the British-American Oil Company in those lands.

Mr. WEIL.—We admit after this conveyance the British-American Oil Company claimed to own that land.

The COURT.—After the conveyance of March, 1908?

Mr. WEIL.—Well, whatever conveyance it was.
[338]

Mr. PRINGLE.—May, 1909.

Mr. WEIL.—May, 1909. There is no contention that the locators had any individual interest in this land. As a matter of fact, we understood they did not have.

Mr. HALL.—Or were given any consideration or compensation.

Mr. WEIL.—Other than the stock of the corporation.

Mr. HALL.—Well, they were not all given stock. Of course that will be shown by the stock book?

The COURT.—Well, I don't think it is necessary to read it. I do not know of any other minutes of any other meetings of the British-American Oil Company which are not included in this book. No others were turned over to me at the time I became

(Testimony of Roy Jones.)

secretary of the corporation. It is my impression that all of the minutes so far as you have read them from this book correctly represent all of the meetings which were held during the period of time up until November 30, 1909. I know of no other minutes which were kept in any other book. I know of no meetings of the corporation or of the directors of the corporation the proceedings of which are not recorded in this book. I think these minutes truly and correctly represent the proceedings at the meetings.

Q. Have you now the stock book of the British-American Oil Company, the stock ledger?

(Witness produces book.)

Q. Will you please turn to the book and tell me who were the stockholders of the British-American Oil Company from the time of its organization in August, 1907, up to and including the first day of January, 1908?

A. This stock journal shows nothing prior to March, 1910.

Q. (By Mr. HALL.) Nothing prior to March, 1910. Have you any records of the British-American Oil Company which show who [339] were the stockholders of the British-American Oil Company prior to January 1st, 1908?

A. Nothing but the stock-book.

Q. Have you the stock-book with you?

A. Yes.

Q. Will you turn to that, please, and tell me who were the stockholders during that period of time,

(Testimony of Roy Jones.)

and how much stock each stockholder owned?

A. According to this book, certificate No. 1 for 10 shares was issued to Elmer E. Cole; certificate No. 2 for 10 shares to A. H. Butler, Jr.; certificate No. 3 for 10 shares to A. H. Butler; certificate No. 4 for 10 shares to William Z. McDonald; certificate No. 5 for 10 shares to Henry J. Thaddeus.

Q. What dates were those certificates issued?

A. January 15, 1908.

Q. January 15, 1908? A. Yes.

Q. And these certificates which you have read, to the five persons for 10 shares each, were all of the shares of stock that were issued by that corporation from the date of its incorporation up to January 15, 1908?

A. That is all that the stock-book shows. I don't know of anything else. I had nothing to do with the company at that time.

The COURT.—What date was that, Mr. Hall?

Mr. HALL.—January 15, 1908.

Q. After January 15, 1908, have you the records of the company that show what stock was next issued, and to whom, and in what number of shares?

A. Yes. [340]

Q. Will you please tell the Court?

A. The stock journal, the ledger, shows that.

Q. Will you take it from that and get it into the record?

Mr. HALL.—I know I got it from the stock-book myself, but I supposed the ledger and the journal showed it.

(Testimony of Roy Jones.)

A. March 10, 1910, certificate No. 1 for 1,000 shares, issued to William Z. McDonald; certificate No. 2, 1,000 shares, William Z. McDonald, certificate No. 3, 1,000 shares, William Z. McDonald; certificate No. 4 for 192 shares, William Z. McDonald; certificate No. 5, for 50 shares, issued to Frank H. Hudson; certificate No. 6, for 1,000 shares, issued to M. Z. Elliott; certificate No. 7, for 1,000 shares, issued to M. Z. Elliott; certificate No. 8, 1,000 shares, issued to M. Z. Elliott; certificate No. 9 for 192 shares, to M. Z. Elliott; certificate No. 10 for 3,192 shares issued to J. P. Jones, returned and not taken, because it was reissued later on differently.

Q. May I ask you, Mr. Jones, who was J. P. Jones?

A. My father, and one of the members of this association.

Q. And your father is now dead? A. Yes.

Q. You may go ahead.

Mr. PRINGLE.—He is generally spoken of as Senator Jones.

A. Yes. On March 12, certificate No. 11, to S. W. Dorsey for 1,000 shares; certificate No. 12 to S. W. Dorsey for 1,000 shares; certificate No. 13 to S. W. Dorsey for 1,000 shares; certificate No. 14 to S. W. Dorsey for 192 shares; certificate No. 15, on the same date, to L. W. Andrews, for 1064 shares; certificate No. 16 to George W. Dickinson for 1,064 shares; certificate No. 17 to Frank R. Strong for 1,064 shares; then certificate No. 18, under the same date, to Roy Jones, for [341] one share, and to John P. Jones, certificate No. 19, for 3,191 shares covering

United States

Circuit Court of Appeals

For the Ninth Circuit. 2

Transcript of Record.

(IN TWO VOLUMES.)

THE UNITED STATES OF AMERICA,

vs. Appellant,

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, GENERAL PETROLEUM CORPORATION, PRODUCERS TRANSPORTATION COMPANY, BRITISH-AMERICAN OIL COMPANY, NORTH MIDWAY OIL COMPANY, SUSAN ELLIOTT, A. B. PERKEY, F. J. ELLIOTT, JOHN BARNESON and WILLIAM WALKER,

Appellees.

VOLUME II.

(Pages 417 to 785, Inclusive.)

FILED

DEC 13 1919

Upon Appeal from the United States District Court for the Southern District of California, Southern Division. CLERK



United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

THE UNITED STATES OF AMERICA,

vs. Appellant,

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, GENERAL PETROLEUM CORPORATION, PRODUCERS TRANSPORTATION COMPANY, BRITISH-AMERICAN OIL COMPANY, NORTH MIDWAY OIL COMPANY, SUSAN ELLIOTT, A. B. PERKEY, F. J. ELLIOTT, JOHN BARNESON and WILLIAM WALKER,

Appellees.

VOLUME II.

(Pages 417 to 785, Inclusive.)

Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

(Testimony of Roy Jones.)

the 3,192 issued before but not taken. Certificate No. 20 to M. Z. Elliott for 596; certificate No. 21 to M. Z. Elliott for 596 shares; certificate No. 22 to A. H. Butler & Company for 1,000 shares; certificate No. 23 to A. H. Butler & Company, 2,000 shares. Now, these are all dated March 16, to A. H. Butler. And certificate No. 24, under March 16th, for 990 shares to A. H. Butler & Company; certificate No. 25 to F. J. Haldeman for 192 shares.

Mr. WEIL.—Will you stop when you come down to the total original issue?

A. I think that is the total original issue, right there. That is all in 1910, and then there are no further changes until 1911. I think that covers all the stock of the company up to that time.

The COURT.—When was the capital stock increased? A. It was decreased.

Mr. HALL.—I was going to ask him about that.

A. Isn't it a fact that the capital stock of the corporation was decreased on February 8, 1910?

A. I think that is the date.

The COURT.—Decreased or increased?

Mr. HALL.—Decreased, reduced to \$100,000.

A. Yes.

The COURT.—The meeting on the 1st of February, 1908, at which there was 50 shares represented, was that all the capital stock?

Mr. HALL.—No, the capital stock was \$1,250,000, but there were only 50 shares issued. The rest of it remained in the treasury and unissued. I may be mistaken about that, Mr. Jones, [342] and if I am

(Testimony of Roy Jones.)

I want you to correct me. I only have such knowledge as I have been able to gather in regard to the history of this corporation.

The COURT.—The original stock was what?

Mr. HALL.—\$1,250,000.

Mr. PRINGLE.—Of which there were 50 shares issued.

Mr. HALL.—Fifty shares issued.

The COURT.—You mean 1,250,000 shares?

Mr. HALL.—No, the capital stock was \$1,250,000.

The COURT.—Dollars, and not shares. How was it divided?

Mr. HALL.—Divided into shares of \$5 par value.

The WITNESS.—Here is the original stock certificate, your Honor (indicating).

The COURT.—I will get all I want here.

Mr. HALL.—And our examination of the records of the county clerk of Los Angeles County disclosed that the capital stock was reduced on February 8, 1910, to \$100,000; and at the time of that, M. Z. Elliott was president, Frank R. Strong secretary, and the directors were Elliott, Strong, McDonald, Jones and Dorsey; and the statement made at that time in this reduction of capital stock proceedings shows that the capital stock was divided as follows, on February 8, 1910: John P. Jones, by Roy Jones, attorney-in-fact, 39,990 shares—

The WITNESS.—That can't be possible.

Mr. HALL.—(Continuing.) Roy Jones, 10 shares; M. Z. Elliott, 40,000 shares; Stephen W. Dorsey, 40,000 shares; George W. Dickinson, 13,333 shares;

(Testimony of Roy Jones.)

William Z. McDonald, 40,000 shares; L. W. Andrews, 13,333 shares; A. H. Butler, 50,000 shares; Frank R. Strong, 13,334 shares.

Q. Do you know anything about those proceedings? [343]

A. I remember there were such proceedings.

Q. Well, do you have any record of your company showing the reduction of the stock at that time?

A. I think it was in the minutes; I am not sure.

Q. Well, have you any stock book or stock ledger or stock journal which shows that the various people were holding the capital stock of the British-American Oil Company on February 8, 1910, in the proportions which I have just read to you?

A. No stock was ever actually issued at all.

Q. Well, how was it held? Was it held in the treasury for the benefit of these individuals?

A. It was simply delayed, I think the idea being that they wanted rather to pool the stock; they did not want any dealing in the stock, and they simply delayed doing it until they did get the reduction. It was more neglect, I think, than anything else.

Q. Now, you have no minutes of any meeting with respect to that, have you?

A. With respect to what?

Q. With respect to pooling the stock and not issuing it, A. No.

Mr. PRINGLE.—That was not a corporate act.

Q. (By Mr. HALL.) Now, will you tell me in what proportion, or what interest was held by Dorsey, Strong, Dickinson—by Roy Jones, John P.

(Testimony of Roy Jones.)

Jones, by his attorney in fact Roy Jones, M. Z. Elliott, Stephen W. Dorsey, George W. Dickinson, William Z. McDonald, L. W. Andrews, A. H. Butler, and Frank R. Strong of the capital stock of the British-American Oil Company on January 1st, 1908?

Mr. WEIL.—Now, I object to that on the ground it does [344] not appear that these parties were interested as early as January 1st, 1908. You are assuming a fact not in evidence.

Mr. HALL.—I want to just change it to conform to the gentleman's objection.

Mr. WEIL.—Let him explain.

Mr. HALL.—And make that, what proportionate part each one of these men I have named held in the capital stock of the British-American Oil Company at the time when they first all became interested in the British-American Oil Company.

Mr. PRINGLE.—Now, that is Elliott—

Mr. WEIL.—Let him explain the situation. Do you understand that question, Mr. Jones?

A. I think I do.

Mr. WEIL.—He wants you to explain the whole situation; that is what he is after.

A. I think I understand you. You want to know—you said first as of January 1st, 1908. You don't mean that, do you?

Mr. HALL.—I have obliterated that date. Leave that out of your mind, and take it up as the date on which all of you whose names I have read became interested in the corporation. Give me the proportion which each one then held.

(Testimony of Roy Jones.)

A. Well, of my own and my father's, that we were holding together, that is, our group was holding—

Q. Now, let's get that, because I want to ask you some questions.

A. The whole ownership was divided into separate groups of men.

Q. All right, tell me the groups?

A. One group consisted of myself and my father; another group consisted of Mr. A. H. Butler and his family, I think [345] his wife and son; another group, known as the Dorsey group, consisted of Senator Dorsey and Mrs. Dorsey and Mr. Haldeman.

Q. And Mr. who? A. Haldeman.

Q. All right.

A. Another group consisted of Mr. Elliott and his partner, whom I afterwards learned to be Mr. Davis.

Q. All right.

A. Another group consisted of Mr. Strong, Mr. George Dickinson and Mr. L. W. Andrews.

The COURT.—That is in addition to whom?

A. That was known as the Strong group.

Q. Strong, Dickinson and Andrews?

A. Yes, Each one of those groups was represented by—

Mr. WEIL.—And McDonald.

Q. (By Mr. HALL.) Where does McDonald come in?

A. Oh, yes, I beg pardon. Dr. McDonald and his son, James McDonald.

Mr. PRINGLE.—That was another group?

(Testimony of Roy Jones.)

A. That was another group. In all the transactions each group was represented by the leader of the group.

Mr. HALL.—I see.

A. In the original transactions my father represented our group, although I soon came in actively after the first meetings. That was long before the locations, I came in. But Dr. McDonald always represented his group in the office, because his son was always in the field. The same was true of Mr. Butler; his son was in the field; in fact, Mr. Butler himself was away most of the time.

Q. You became familiar with the transactions prior to [346] the time the locations were made, did you not?

A. How do you mean, the transactions?

Q. Well, I mean the business of these various groups and the British-American Oil Company.

A. No.

I didn't know there was such a company as the British-American Oil Company prior to January 1, 1908, when these 207 mineral locations were made in Kern and Fresno Counties, California; I was not familiar with the affairs of that company. I first learned there was a corporation known as the British-American Oil Company towards the middle or end of January, 1908. I think Dr. McDonald told us, Dr. William Z. McDonald. He said he and a group of men with whom he had been associated had a corporation which had been organized, which had never been used. At that time we were discuss-

(Testimony of Roy Jones.)

ing forming a corporation of our own. Mr. Dorsey and Mr. Elliott, who were Arizona men, that is, who were operating a great deal in Arizona, were urging an Arizona corporation, a nonassessable corporation. Dr. McDonald suggested here was a corporation already at hand, with its seal and everything that was necessary, and he thought they could turn it over to us free of expense, and that rather interested us. The British-American corporation was turned over to us by McDonald and his associates free of expense. I think I at once became an officer of the British-American Oil Company, and familiar with the affairs of that company. I was one of the original five that took the directorate over from the old company. It was taken over February 3d, 1908. I did not at once familiarize myself with the affairs of the British-American Oil Company because it had no affairs up to that time. It had no property. We investigated that before we took it over. We found it had no liabilities [347] and no assets, else we would not have taken it. It had no funds in the treasury. It never had been used. There had never been a treasury established, it was lying dormant. My associates consisted of the Jones group, the Butler group, the Dorsey group, the Elliott group, the Strong group, and the William Z. McDonald group. After myself and my associates took over the British-American Oil Company there was no division of the stock of the corporation until 1910. As soon as we took it over, we commenced to

(Testimony of Roy Jones.)

have meetings and transact business of the corporation.

Q. In what proportion were each of these six groups represented in the handling of the transactions of business affairs of the British-American Oil Company from the time it was taken over in February, 1908, until the final issuance of stock certificates in February, 1910?

A. The Butler group got 20 per cent, and each of the other groups got 16 per cent, making a total of 100.

Q. What fact or facts, or circumstance or circumstances, determined the fact that the Butler group should have 20 per cent and each of the other so-called groups should have 16 per cent of the capital stock of the British-American Oil Company?

A. The Butler group got the 20 per cent principally because they demanded it, asked for it, and they asked for it because they had all the necessary information, the surveys and things of the land that made it possible to locate, and they brought it to our attention, really; it was through the Butlers that the whole proposition came to our attention.

Mr. A. H. Butler never called the proposition to my attention. I did not meet him until afterwards. He called it to the attention of some of the others. I think he talked with Dr. McDonald, who had been associated with him in some things. [348] The proposition was first of all submitted by Senator Dorsey to my father at his office. Father went up quite frequently to Senator Dorsey's office. They

(Testimony of Roy Jones.)

had been in the United States Senate together and knew one another very well. Father was getting to be an old man, nearly eighty years old, and he used to go in and loaf around Senator Dorsey's office more or less. These conferences between my father and Senator Dorsey occurred late in the fall of 1907. This proposition was first called to my attention when father talked to me about it when he came back and told me that he was negotiating these things, planning and talking about them, and I was very busy down at Santa Monica, and I did not go to some of the preliminary talks he had up there; I did not go up, as a matter of fact, until they really got to doing something. Shortly before the time for location they made the final plans. Oh, we got together a number of times, the different people who were going into the syndicate. We met and talked over ways and means and plans, and met a number of times during those months. The people who met and talked over these plans were usually Mr. Elliott, Mr. Strong, Senator Dorsey and Dr. McDonald, and I was there later, my father and I. Father was nearly always there, and I was there frequently. I think Mr. A. H. Butler was not there. I think he was away. There was no one at these meetings who was absolutely acting for Mr. Butler, but Mr. McDonald knew a good deal of the circumstances, and what Mr. Butler was willing to do, and they had been associated before. I think he was rather the spokesman for Mr. Butler. The plan that was formulated was that on the night of January 1st

(Testimony of Roy Jones.)

they would make those locations and make them all simultaneously. The lands were to be developed by the various associates that had gotten together. I mean Butler, [349] Senator Dorsey, M. Z. Elliott, Frank R. Strong and William Z. McDonald, and their associates. In some of the meetings I think Mr. Andrews was present—at one meeting, and I am not sure whether Mr. Dickinson was; he was usually represented by Mr. Strong. Mr. Andrews was in what was known as the Strong group. My father and I put up money for the locations, whether it was prior or afterwards to pay the bills, I don't remember. We put up several hundred dollars, I think nearly a thousand. I think Senator Dorsey put up \$500.00 if I am not mistaken. Mr. Butler didn't put up; that is, we loaned it. Somebody had to pay the bills, and we happened to have the money and we put it up. The understanding was that we would get it back. I don't think Elliott put up any money. Those three put up all the money that was advanced, and that was all that was necessary; that took care of the bills, that is all. My father, Dorsey and Strong put up the money.

Q. Now, how did Butler get his interest in it?

A. The interest had nothing to do with the money that was put up, because that was simply going to be given back to us. Butler got his interest largely because he put us next to the whole proposition. He was the man that we got our information from, that knew about the land and the boundaries.

(Testimony of Roy Jones.)

He had plats, maps, surveys and all sorts of thing. I think he had surveys of most of the lands up there. It was not Butler who designated the lands that should be located. I think the three oil men in our association were McDonald, Butler and Elliott. They were more or less oil expert men. Elliott got his interest by reason of his activities; and we all got together and decided to go into it together. He drew it to Dorsey's attention, and Dorsey brought it to our attention. McDonald [350] got his interest by reason of the fact that he was associated with Butler and brought it to the attention of some of those who brought it to our attention. At that time it was not known that Butler and William Z. McDonald were in possession of the British-American Oil Company. I first learned of the existence of the British-American Oil Company some time along about the middle or latter part of January, when we got together to talk over how we should handle the locations, now that we had them. Prior to the time of making the locations a number of different suggestions had been made as to how we would handle them.

Q. What had those suggestions been?

A. Well, first of all, it depended a little bit on how we were associated, how tight our association was; and we thought that we would go ahead—at first there was some talk about handling some of the land individually, and some talk about handling it as an association, and then we did talk about organizing an Arizona corporation.

(Testimony of Roy Jones.)

This talk didn't occur before the making of the locations, we didn't have time; that was rather rushed along at the end. I will tell you what brought about the transfer of the corporation to this association. Dr. McDonald, I think it was, when we were talking about organizing the Arizona corporation, said, "What is the use of going to that expense? We have got one that is not working, that I think we can get for you free of expense, as the fellows that are in it never used it and have no interest in it, and I think I can get it for you." And so we said, "Go ahead and see if you can."

My name was not used as a locator. Neither was my father's name used. Our names were not used because they had a theory at that time that the location notices ought to be [351] signed in person by the people whose names appeared on them, and I was not there to sign them and my father would not have taken the trouble to sign them. He was nearly 80 years old, and had writer's cramp, and signed with great difficulty, and so he would not have signed anyhow. I have forgotten where I was, but I was not available when they signed the notices, anyhow.

Q. Were there any of this list of locators I have read to you who acted for you or represented you as signers of these location notices?

A. Not as representing me personally, no sir.

Q. There were none of them there who were designated as your special agents? A. No.

Q. Nor were there any of them designated as

(Testimony of Roy Jones.)

special agents of your father in making these locations? A. No.

I don't know who got this man B. Adams to sign the location notices, I was not there. If I had been there I would have signed myself, if I had been available.

Q. Now, when you finally determined what per cent each one of these groups should have in the affairs of the corporation, who decided that question?

A. The interest of the groups, did I understand you?

Q. Yes.

A. Well, the groups—you see, the original ones that appeared in the proposition were six.

Mr. WEIL.—That is, the heads of the groups.

A. The heads of the groups. The original people that appeared in talking over the proposition were six different [352] people, and each one of those had their subsidiariés and their friends that wanted to come in on the group, but each one represented his own group in the conversation, and the subsidiaries seldom appeared. For instance, Mrs. Dorsey never appeared, naturally. And Mr. Andrews very seldom appeared, until afterwards, and Mr. Dickinson I think never appeared at the time. Mr. Strong came and represented him. And Mr. Butler's interest was decided, as I say. He said he would stand out and give us all these facilities, if we would let his group take in a fifth, that is 20 per cent for the group. And there were five other groups, and the understanding was that those groups could subdivide themselves as

(Testimony of Roy Jones.)

they pleased, but each group was to take a fifth of the remainder, you see.

Mr. WEIL.—A sixth.

A. No, a fifth of the remainder.

Mr. A. V. ANDREWS.—A fifth of the remaining four-fifths.

A. A fifth of the remaining four-fifths; that is, 16 per cent.

Q. (By Mr. HALL.) Was there any division of the stock of the British-American Oil Company based upon the number of locations made by the different individuals whose names appeared upon these 207 locations?

A. No.

Q. The number of locations had absolutely nothing to do whatever with the division of the British-American Oil Company stock? A. No.

Q. And did it ever have anything to do with the distribution of the funds or the property of the British-American Oil Company that you know of?
[353] A. No.

Q. That situation was absolutely ignored throughout the entire life of the corporation? A. Yes.

Q. Have you in your possession the original location notices which were laid upon these lands?

A. We had some of them here to-day; I brought them along at your request. They were here this morning. I think they are here, some of them.

Q. May I see those, and examine them? I may ask to put these in, or make a record up, showing that entire situation, without going to the extent of ex-

(Testimony of Roy Jones.)

tending all of them or getting certified copies.

A. At your request, I searched the papers at the attorney's office, but these were all I was able to lay hands on. There may be others, but I don't know where they are.

Mr. PRINGLE.—Mr. Hall, before I forget, with regard to Mrs. Haldeman, I suppose we will concede she would testify like her husband as to her motives and the circumstances under which she signed the notices, and so on. You didn't put her on the stand.

Mr. A. V. ANDREWS.—We assumed what he stated was correct.

Mr. HALL.—I assume we can let the record show that, your Honor. You may examine. I don't know that I will, but it may be possible that something will develop and I may want to recall this witness in regard to his records later on.

Cross-examination.

(By Mr. WEIL.)

My father is dead. Of the original group of six Senator Dorsey, Mrs. Dorsey, my father, Senator Jones, Mr. Elliott [354] Dr. McDonald and A. H. Butler have died. Mr. Strong is the only head of one of the original groups that is now alive. When these locations were contemplated it was agreed that all the locations should be on behalf of the association in which these various people have been interested, I have already indicated. This was to be done regardless of how many location notices each one signed. We paid no attention to the names on the locations. The whole scheme was planned for this

(Testimony of Roy Jones.)

association that I mentioned. The locators were all acting as the agents of the association whether they were members of the association or not. The fact that some of the members of the association happened to sign the location notices as agent for the association was mere circumstance. They were simply available. They were there, that was all. By "association" I mean these fourteen or fifteen people. This "association" I have referred to was not a corporation at that time. It did not become a corporation until the end of January—Well, I think in February when we took it over. I had never heard of the British-American Oil Company prior to January 1, 1908. I had no interest in it whatever prior to that time. I know that a great many of these locators were not acting on its behalf. I don't think anybody was. Nobody knew anything about it that I knew of. Dr. McDonald was one of the heads of a group who represented his group in the association. I always understood that he and his son Jim were in his group. Strong, George Dickinson and L. W. Andrews were in the Strong group. The Elliott group consisted of Elliott and his partner Dr. Davis. Mr. Haldeman has stated my understanding of who composed the Dorsey group. My father and myself composed the Jones group. Father and I were going half and half. That would give me 8 per cent, and he had 8 per cent of the entire holdings. My father as the head of a [355] group got sixteen per cent and half of that was mine. I always understood Mr.

(Testimony of Roy Jones.)

and Mrs. Butler and Albert Butler Jr. composed the Butler group.

Q. That would make about 15 or 16 people who were really interested in this association, would it?

A. I have not counted them; it is about that many.

When the conveyance was made to Strong and Elliott as trustees that conveyance did not change the interests of the various members of these groups as they were originally contemplated. Elliott and Strong were understood to hold that in trust for the benefit of the members of the association. A long while after Strong and Elliott conveyed this property to the British-American Oil Company the stock was issued by the British-American Oil Company to the heads of the groups as their interests were originally arranged for.

Q. Well, do I understand then when Strong and Elliott conveyed to this corporation, that the original members of the group at the time of this conveyance, —the original members of the association were entitled to stock interest at that time in the corporation in accordance with the interests that they had in the original association?

A. Yes; our understanding was, if I apprehend your question, that when the corporation was formed the Butler group would be entitled to 20 per cent of the stock and each of the other groups would be entitled to 16 per cent of the stock.

Q. And it was no particular concern to the corporation or the association how each head of a group

(Testimony of Roy Jones.)

divided his up amongst his members of his group; is that correct?

A. No, because before the stock was issued there was some trading back and forth, I think, on that.

[356]

When we took over the corporation the capital stock was \$1,250,000, divided into shares of \$5 each. That would be 250,000 shares. Subsequent to that time, and before the stock was actually issued, a proceeding was had whereby the capital stock was reduced.

Q. And as a matter of fact, until the stock was issued in 1910, which was after the capital stock was reduced, there were no stock certificates issued at all outside of the original 50 shares which were issued to qualify the directors.

A. Those were not even reissued.

Q. According to the record, as I see it there, the 10 shares of stock were apparently not issued to the original subscribers at the time they incorporated the company, and it was not issued until you people were ready to take it over; is that correct?

A. As I understood it, they had to issue the stock then in order to transfer it to us. It never had been used; they had never even qualified; they had never done anything about it. There was no stock issued then until we got it, and they issued it then to the original directors, who immediately endorsed it in blank.

Q. They immediately endorsed it in blank, and then the people who were interested in this associa-

(Testimony of Roy Jones.)

tion, in taking over the corporation, took these shares endorsed in blank and qualified themselves as directors? A. Yes.

Q. But they never reissued the stock to themselves, but they let it stand in the original names, endorsed in blank; is that correct? A. Yes. [357]

Q. And the corporate records stood that way, with only 50 shares issued, and that not in the name of the directors, until 1910? A. Yes.

Q. And in 1910 all the stock was issued in accordance with the original agreement? A. Yes.

Q. Except in so far as it had changed hands by dealings between the parties in the meantime?

A. Yes.

There was no arrangement or understanding of any kind whatsoever before the locations with the single exception as to the interests that each group was to have in the entire association. We decided that all the members would share equally, with the exception of the Butler group, which got a little more. Outside of that there was no understanding whatsoever or no discussion as to what disposition was to be made of the property or anything else; anything that transpired as to that took place after the locations. What these various groups were to get was an undivided interest in the whole; that was the original understanding.

Redirect Examination.

(By Mr. HALL.)

We had determined the amount of each interest prior to the making of the location. Each group was

(Testimony of Roy Jones.)

to have a fifth of four-fifths, with the exception of Mr. Butler's group, which had a straight fifth. That determination was arrived at prior to the time the locations were made.

Testimony of Henry L. Musser, for Plaintiff.

HENRY L. MUSSER, a witness called in behalf of the plaintiff, having first [358] been duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is Henry L. Musser. I reside in Los Angeles, I am a seed merchant. I have lived in Los Angeles 22 years. I was living here in the years 1907, '08 and '09. I presume I am the same Henry L. Musser whose name appears upon 184 location notices of the location of placer mining claims, which location notices are of record in Kern County, California. I suppose I signed the original notices. The record would have to show when I signed them. I haven't any idea of the time. I think we were in Senator Dorsey's office when I signed them. Mr. Haldeman, who is a very good friend of mine, requested me, in order to make tangible, some location lands—some oil lands, requested me to sign these location papers as they wanted to make these things tangible in order to make a transfer of these claims. Now let me get that thing right, if I can. About that time groups of men were locating oil claims in groups of eight, to take up 160 acres with the idea of developing one well that would prove up the 160 acres

(Testimony of Henry L. Musser.)

to conform with the law, and Mr. Haldeman requested me to assist him in fixing up these papers so that they could turn them over to a company who would develop these claims, and I understand I was just an instrument to conform with the law. I had no idea who the company were. I didn't hear the name of any corporation at that time that I know of, and I didn't have any recollection of any. I have no recollection of knowing who the persons were that were interested in this location. I don't believe I ever did know. I didn't talk to anyone outside of Mr. Haldeman in regard to making the locations. I consented to do what Mr. Haldeman asked me [359] to and when the location papers were ready I signed them and when the assignment papers were ready I signed them and dismissed them from my memory. I signed the location notice and the assignment papers because Mr. Haldeman asked me as a friend. I had no other purpose whatever than that. I did not know where the lands were located. I never visited them. I never invested any money in these lands either in the development or the expense of locating them. I didn't have any intention of so doing at the time I signed the location notices. I never claimed to have any interest in the lands covered by these location notices. Independently of what you have said to me here I don't know upon how many of these location notices my name appeared. I never made any inquiry to ascertain. I never made any inquiry to ascertain what became of the lands. I have never received anything of value

(Testimony of Henry L. Musser.)

by reason of having signed these location notices. I didn't expect to receive anything of value at the time I signed the location notices. I was not promised anything of value at that time. Of the men who were colocators with me on these lands I knew George C. Haldeman, Stephen W. Dorsey and Albert G. Shaw. I did not know Warren F. McGrath and George W. Dickinson. I had known Senator Dorsey ever since Mr. Haldeman was his secretary. I never discussed this matter with Senator Dorsey. I never discussed the matter with Mr. Shaw.

Q. The records of Kern County likewise disclose that these lands were conveyed by yourself and 21 others, the conveyance describing in all 207 locations upon which your name appeared as a locator of 184; on March 4, 1908,—I say yourself and the others according to this instrument,—conveyed all of these 207 locations to Frank R. Strong and M. Z. Elliott, designated in the instrument as trustees. Were you acquainted with Frank R. Strong and M. Z. Elliott?

A. No, sir.

Mr. Haldeman requested me to execute this deed. There was no consideration paid me for the [360] execution of this deed. I executed it out of friendship for Mr. Haldeman. I didn't expect to receive anything of value for executing it. I have no recollection of any declaration by Mr. Strong or Mr. Elliott, or by Mr. Haldeman for them, as to the trusteeship that was created or attempted to be created by this instrument. I made no inquiry as to why the lands were being conveyed to Strong and

(Testimony of Henry L. Musser.)

Elliott as trustees. I understood when I signed the location papers that a company was going to develop those lands. I was only an instrument to conform with the law and the regulations, as I supposed. I never heard of the conveyance of May 4, 1909, by Frank R. Strong and M. Z. Elliott as trustees of the 207 claims to the British-American Oil Company. I was not requested that I know of by Mr. Strong or Mr. Elliott to give my consent to the execution of that instrument. I did not receive anything of value by reason of the execution of that instrument. There was no declaration of trust made by either of these parties, verbally or written to me with respect to this transfer. I don't now claim any interest in any of these lands. I have never been a stockholder of the British-American Oil Company, the Dominion Oil Company, the Bankline Oil Company, or the General Petroleum Company or Corporation. I don't know Captain Barneson or Mr. Walker, who are defendants in this case. I never had any business or partnership relations with M. Z. Elliott, Senator Dorsey or with Mr. Haldeman.

Cross-examination.

(By Mr. WEIL.)

I didn't locate this land for my own benefit. I located it as an agent for somebody else at the request of Mr. Haldeman. I am clear as to what Mr. Haldeman said to me at the time he requested me to become a locator. It was to the [361] effect that I was to assist him to conform to the law to bring this into tangible shape, to bring these locations into

(Testimony of Henry L. Musser.)

tangible shape, that they had a buyer or company who would develop these lands.

Q. Now, the reason I asked you if your recollection is clear, could you swear at this time that Mr. Haldeman referred to a company, or an association, or a syndicate, or a corporation? Which did he say? Is your recollection distinct enough to swear at this time, after a lapse of ten years, what word he used?

A. No; I couldn't use the words, but I knew we were to put that into tangible shape—

Q. Never mind that part of it. Excuse me for interrupting you. The only part I want—you think he used the word that there was a company going to develop this. Are you positive that he might not have said association?

A. No; I cannot recall the exact wording. I can only give—

Q. He might have said—

Mr. HALL.—Wait just a minute.

Q. (By Mr. WEIL.) Or he might have said syndicate, might he?

A. He may have said syndicate.

Q. Or he might have said association, or he might have said company?

A. I admit he might have said either of those.

I had no intent of defrauding the Government in any way. I thought I was acting as agent on behalf of this association, or syndicate, or company or whatever he said.

Testimony of Gustavus A. Horn, for Plaintiff.

GUSTAVUS A. HORN, a witness called in behalf of the plaintiff, having first been duly sworn, testified as follows:

Direct Examination. [362]

(By Mr. HALL.)

My name is Gustavus A. Horn. I reside at 3621 McClintock Avenue, Los Angeles. I am an investigator. I have my own bureau. I am licensed by the state. I was residing in Los Angeles during the years 1907, '08 and '09. I am the G. A. Horn whose name appears upon 63 placer mining locations which are recorded in the records of Kern County, California. I signed one paper. If I remember right I think it was some kind of a conveyance. That is all I signed that I can remember of. In a way I know how my name came to appear upon these 63 location notices, in a way I do not. I was employed by McDonald and Stott as bookkeeper and I was requested to go to McKittrick in Kern County with a bunch of men, in that capacity. I was employed as a bookkeeper in the office. I was going up with the gang to keep track of their expenses and so forth. The firm was McDonald and Stott, composed of Dr. William Z. McDonald and a man named Stott. Stott was in the east somewhere.

I will give you the details about my name appearing upon these location notices. I had a conversation with Dr. McDonald December 26th and 27th, 1907. He told me one afternoon he wanted me to go to McKittrick with a gang of men, and they were

(Testimony of Gustavus A. Horn.)

to do some prospecting or locating claims, and so on, and I was to go up with the gang and his son and keep track of their expenditures and supplies that were used, and so forth; and I think it was the next day, if I remember right, I was up with the crowd, or part of the crowd, and met the rest of them at McKittrick. Doctor McDonald's son James went up with me, went up on the train. At McKittrick we were met by—we had, I think, 8 large automobiles that were hired for the purpose and [363] from there we went over the desert to the oil fields by machine. My duties when we started out were to check up each machine with the men in it, and the supplies, and I took the last machine. Doctor McDonald and I were, I think, the only ones and the chauffeur in that machine, the last machine. Since I have been subpoenaed here I have been trying to recollect the names of the men who were in those machines, trying to refresh my memory, and I made a small short list, if you want me to refer to it. The name of B. Adams sounds familiar; I wouldn't be certain whether he was there or not. I don't remember Lewis W. Andrews. A. W. Casey was there. N. G. Casey was in the office at the time. He was one of the employees in Doctor McDonald's office. I think N. G. Casey was his son. I don't know W. P. Casey. Wallace D. Dickinson was not there. I don't know George W. Dickinson. I remember Stephen W. Dorsey, but I don't remember whether he was in the party or not. I don't remember L. B. Dorsey. M. Z. Elliott was in the crowd. I don't

(Testimony of Gustavus A. Horn.)

remember the name O. C. Gebauer. I don't remember George C. Haldeman. Some of these parties might have been in it, but I don't remember. I don't remember F. J. Haldeman. Addison C. Macon was not in the crowd, although I remember the name. She was a lady that came up in the office quite often and Doctor McDonald lived with the mother. They had an apartment house. I knew Henry L. Musser. I don't remember Warren F. McGrath. I don't remember H. R. McDonald. I remember J. E. McDonald, that is the son of Doctor William Z. The name Albert G. Shaw sounds familiar, but I wouldn't say that he was there. Frank R. Strong was one of the trustees.

Doctor McDonald did pretty near all of the talking, if I remember right, about my name appearing upon these locations. [364] It has been about 12 years ago, but it was between Doctor McDonald and his son James that I received my instructions from, and after we reached McKittrick,—it was either McKittrick or the cabin right near our nearest point to the field, Doctor McDonald told me that one of the boys, or several of the boys could not—something had happened that they could not be on deck, as he said, and asked me to act instead of one of them, and asked me to make the location for one of these men, but he didn't mention the name, as I remember it. I don't know the name of the man for whom I was substituted. I placed my name upon these location notices because Doctor McDonald at the time we spoke about that,—he says, that from the fact

(Testimony of Gustavus A. Horn.)

that one of these boys didn't show up, and he was to be in the party, I should make the claim, and I could then make the assignment to this party's trustee. I was to allow my name to appear on the notices and then assign, because I had no interest in it at all. I had no interest in the project at all. I never claimed any interest in these lands that were located. I never put any money into them for the development or cost of location. I afterwards assigned this deed of March 4, 1908, to Frank R. Strong and M. Z. Elliott, as trustees. I don't remember the date, but it was few weeks after his return from up north. It might have been a month and a half, or it might have been two months in McDonald's office he handed me an assignment and told me to sign it over. He said, "You know that was what you were supposed to do, and you had no interest in it, anyway," and he says, "Mr. Elliott and Mr. Strong are the trustees for the boys that were not up there," or something to that effect, and I signed the paper. I was not claiming any interest in the lands at the time I made this assignment. I didn't have enough [365] interest in it to even inquire into the project. I never received anything of value for the placing of my name upon these notices, or the execution of the assignment. I didn't even get all my salary for bookkeeping. I never received anything for the execution of this assignment or conveyance to Strong and Elliott. I was never a stockholder in the British-American Oil Company. I don't now claim any interest in any of the lands

(Testimony of Gustavus A. Horn.)

upon which my name appears as a locator. Neither Strong nor Elliott ever verbally or in writing declared to me, or in my presence, that I had any interest in any of these lands. Neither one of them ever talked to me about the matter at all. I have talked to Elliott many times in the office, but just casually, "How do you do." He used to come up to Doctor McDonald's office often. No person ever declared in my presence that I had any interest in these lands. I was not consulted or advised about the execution of the deed of May 4, 1909, from Strong and Elliott, in which they described themselves as trustees, conveying to the British-American Oil Company the 207 claims. I never received anything on account of the execution of that deed.

After consulting the list I made ten days ago I can tell you the names of some other men who were up there when the lands were located. There was one young man by the name of Clyde Warrman; another man by the name of Ed. LaTenzer; another one named Dave Clark. The other men were John Ramage, Herbert Royce, Clarence Reynolds, E. E. Cole and A. H. Butler. I don't remember whether they went up with us or not, but they were in the crowd part of the time. I understood that these men who were in the party and whose names did not appear on the location notices went along to locate the land. They [366] were just doing the physical act of tacking up the notices and things of that sort. They were men employed by Mr. McDonald. They all went up. They were part of my gang, as

(Testimony of Gustavus A. Horn.)

it was designated. I think my gang, as Mr. McDonald called it, consisted of 47 men. I know we had six or seven machines and they were crowded to their capacity. I don't know the extent or scope of country these locations extended over so far as acres and miles or rods are concerned, but I do know that it was far enough that certain men were stationed on certain prominent points with pistols or guns so that they could signal each other by shooting, giving shots; they had a code of a certain number of shots, whatever the code was; that was the signal back and forth. They were to make certain movements, or do certain things to use the shooting as a signal to let each other know what they were doing. These locations were made immediately after midnight, December 31st, 1907.

Cross-examination.

(By Mr. WEIL.)

I had no intention of entering into any fraudulent conspiracy to defraud the Government of the United States out of any land at that time. I didn't understand that that was the intention of the men who spoke to me. In fact, when I started from the office, I was supposed to go in the capacity of, you might say, straw-boss and timekeeper, and so on. The sole reason for my participation was the absence of some individual and I acted in his place or stead. I was supposed to act on his behalf. I didn't claim any interest in it myself. At the time I believed I was making the locations on behalf of some other man. That was what I was told. I did not know of an

(Testimony of Gustavus A. Horn.)

association that was organized to locate these lands. [367] I knew nothing about it. I did not know Senator Dorsey personally. I knew Senator Dorsey had been up to the office a number of times to see Mr. McDonald, but that was nothing unusual. Doctor McDonald had all sorts of business men and moneyed men come up there all the time. McDonald and Stott were promoters of various enterprises.

Testimony of George C. Haldeman, for Plaintiff.

GEORGE C. HALDEMAN, a witness called in behalf of the plaintiff, having first been duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is George C. Haldeman. I reside in Los Angeles. I am a deputy collector of internal revenue. I was living in Los Angeles in the years 1907, '08 and '09. I was employed during that time by Ex-senator Dorsey as a secretary. I am the George C. Haldeman whose name appears upon 108 notices of the location of placer mining claims recorded in the records of Kern County, California. I am the same George C. Haldeman whose name appears upon the location notice of the Zee No. 8 placer mining claim embracing the Northwest quarter of Section 15, Township 31, Range 22, upon which Warren F. McGrath, O. C. Gebauer, L. W. Andrews, Wallace D. Dickinson, George W. Dickinson, Frank R. Strong and Stephen W. Dorsey also appear as locators. I signed the location notices which were

(Testimony of George C. Haldeman.)

posted there and bear my name. I remember of signing them but can't tell you when I did it. I signed those location notices under the same circumstances as any of the rest, that I was to have an interest in them—my interest in the location. Mr. Elliott and Mr. Dorsey first talked to me about making these locations. I can't state exactly whether it was determined at any time [368] upon how many notices my name would appear.

Q. Can you tell me why it was that your name appeared on 108 of these location notices and the others varied all the way from seven to 201 locations?

A. Well, I presume it was because I was to have an interest in the thing, that I appeared oftener than some of the others. I don't know why the others didn't.

Q. What did Senator Dorsey say to you about this?

A. That I was to participate with the rest of them.

Q. Well, who were the rest that were to participate in it?

A. Well, the names that you mentioned there, Mr. Dorsey, Mrs. Dorsey, Strong, Dickinson, Jones and Elliott.

I may have known B. Adams, but I don't recall him now. I knew Lewis W. Andrews at that time. I think he was to participate. I don't recall the name A. W. Casey or N. G. Casey or W. P. Casey, I don't know whether they were to participate in the benefits derived from making these locations. I knew Wallace D. Dickinson and George W. Dickin-

(Testimony of George C. Haldeman.)

son. They were to participate. I knew Stephen W. Dorsey and L. B. Dorsey; also M. Z. Elliott. They were to participate in these lands. I knew Miss O. C. Gebauer. I understood she was to have an interest in them. I don't recall the name G. A. Horn. I don't know whether he was to participate or not. I knew F. J. Haldeman. She was my wife. She was to participate with me in those lands. I don't recall Miss Addison C. Macon. I don't know whether she was to participate or not. I knew Henry L. Musser. I don't know whether he was to participate, I am not sure. I think he merely went into it to help me along, a friend of mine. Mr. Dorsey asked me to get the names of some of the persons whose names appeared upon these [369] location notices. I don't recall just what he said about anybody else, any friends that I wanted to put on there.

Q. Well, did he say anything about whether or not Mr. Musser would participate in the benefits to be derived from making these locations?

A. I have a faint recollection that he did say that they would be taken care of; something like that.

Q. Was there any definite amount stated for these people?

A. I don't know; if he did, he made it to them direct; he didn't through me.

I knew Warren F. McGrath. He was to participate. I knew H. R. McDonald and J. E. McDonald. They were to participate. H. R. McDonald is Helen McDonald, J. E. McDonald was the son of W. Z.

(Testimony of George C. Haldeman.)

McDonald. J. E. McDonald was to participate in the benefits derived from these locations. Albert G. Shaw was to participate the same as Mr. Musser was; he was chosen by me and Mr. Dorsey. I knew Frank R. Strong. He was to participate in the benefits.

Q. How was it determined, the proportion in which each person would participate in the benefits to be derived from making these 207 locations?

A. Why, each one according to his—according to what he would be entitled to, as I understood it.

Q. And what was each one entitled to, as you understood it?

A. Well, sort of groups, as I understood it, at the time. I was to have a third, I think it was.

Q. Of all of the claims?

A. Yes, as I understood it.

Q. A third interest in all the claims?

A. Yes. [370]

Q. Well, how much did you finally get out of it?

A. I got, I think, one hundred and ninety some shares of stock.

Q. In what company?

A. In the British-American. I think it was the British-American—yes, it was.

I couldn't tell you when I first learned of the British-American Oil Company. After they had—I understood they took this over after they were going to form the company, they took this company as it was already organized.

Q. Well, did you have an understanding before January, 1908, that they were going to have a com-

(Testimony of George C. Haldeman.)

pany to take these lands over?

A. Well, they were going to do something of that sort. It was not definitely understood just how they were going to arrange it. I knew I was assistant secretary of the company for a little while.

I was assistant secretary of the British-American company after this group of men took it over. They merely took over that company, I understood, on account of its being an organized company. It was just a shell that was already in existence, and they took it over to carry out their plans. I don't remember when they first commenced to talk about taking over this company. I don't remember the date; some time prior to that. It was some time after they located that they took over the British-American. They had not commenced to talk about it before they had made the locations. They commenced to talk about it after the locations were made.

I requested Mrs. Haldeman to participate in these locations. I explained the situation to her, she would have a [371] joint interest with me. The 192 shares of stock that I got in the British-American Oil Company represented both the interest of myself and Mrs. Haldeman. We didn't each have 192 shares. I knew about the deed that was made on March 4, 1908. I don't remember the date. I remember of making that deed to Strong and Elliott. I suppose Senator Dorsey and Mr. Elliott both talked to me about the execution of this instrument. I don't remember just how it came about. I didn't suggest that I would sign it. It was talked over

(Testimony of George C. Haldeman.)

among all of them there that that was the proper way to do it. I talked to Mrs. Haldeman about her signing it. At the time of the execution of this deed in 1908, there was some talk about the trusteeship of Elliott and Strong, but I don't recall just what it was. My recollection as nearly as I can remember, it was for the whole of the rest of the locators. Mr. McDonald was to have some interest in that. He doesn't appear to have been a locator, and yet I think he was to have an interest, I don't know so. There were so many interested in it I don't know which was which. Most of my conditions and directions came from Senator Dorsey, and Mr. Elliott, as well. I talked a great deal with Mr. Elliott. I was employed at that time in a confidential capacity by Senator Dorsey. I did not receive anything specifically because of the execution of this deed of March 4, 1908. I executed it because I was a locator, that is all.

Q. When did you get your 192 shares of stock in the British-American Oil Company?

A. Well, I can't give you that date. I don't—it was after they were fully organized and took over the name of the British-American Oil Company; I don't remember the date at all.

I suppose it was Senator Dorsey who determined that my share of the capital stock of the British-American Oil Company should be 192 shares. I didn't know at that time how many shares of stock Senator Dorsey had. At that time I didn't know whether he had more or less than I had. I did after-

(Testimony of George C. Haldeman.)

wards. [372] I found out afterwards that Senator Dorsey had more. I don't know how and by what reasoning it was determined that Senator Dorsey should have a greater number of shares than I had. I hardly know how he arrived at it. I just remember he said that was what was coming to me, so I didn't make any fuss about it. I accepted it because I wanted to keep my position; it was necessary. I raised no question as to the quantity for that reason, and I accepted that as the share of myself and Mrs. Haldeman. I did not ever afterwards receive anything of value from the British-American, or from Senator Dorsey, or any other person by reason of the fact that my name appeared upon these location notices. When the lands were conveyed by Strong and Elliott as trustees on May 4th, 1909, it was talked over in my presence. I suppose I had something to say, not very much. I think Mr. Elliott and Senator Dorsey were in charge of the negotiations with respect to the making of that conveyance. I don't recollect any expression at that time by either Elliott or Strong as to their trusteeship, and to whom they should be accountable for their action in the transfer of this property. I don't recollect of any expression at that time by these people, Strong or Elliott, as to what extent they should be accountable to me, or to any other person, by reason of their making this transfer. I am not now a stockholder in the British-American Oil Company. I disposed of my stock four or five years ago. I didn't claim any interest in the Section 15, Township 31, Range

(Testimony of George C. Haldeman.)

23, other than the interest which was represented by the 192 shares of stock in the British-American Oil Company, except I have spoken of what I should have, I should have had more stock. I didn't make any claim to any specific portion of the lands embraced in that [373] quarter-section. My claim had been these 192 shares of stock. I didn't put up any money in these matters. My interest in these transactions was to come through Senator Dorsey. I didn't look to any person other than Senator Dorsey. I did depend on Mr. Elliott to see that I was properly taken care of. I also depended upon Senator Dorsey. I knew that Senator Dorsey put up money in connection with these matters. I never expressed to Senator Dorsey my dissatisfaction with the interest I received out of that. I don't know who did put up the money to carry on these locations and the development of these lands. I know that Senator Dorsey put up some. He was to put up some; that is the only thing I was interested in. I know some of the others put up some money, but I don't know how much or how many. I don't recollect how much Senator Dorsey put up. I can't say whether or not Senator Dorsey's interests in the lands were in any wise measured by the amount of money he put in the transaction.

I acted in this transaction for Mrs. Haldeman. She followed my directions in signing these locations and carrying on these transactions. Whatever was mine was hers, and whatever was hers was mine in these matters. We simply acted in *consort*, as man

(Testimony of George C. Haldeman.)

and wife. I advised her from time to time as to what was going on. She assented to what I did in these transactions.

Cross-examination.

(By Mr. WEILL.)

The only recollection that I have about the circumstances under which this land was located was that Mr. Elliott and I talked it over. He was there sitting in my room, my room was separate from Mr. Dorsey's, and he told me what he [374] was going to do; that is, he discovered some valuable land up there, and they were going to locate it, some people had located it, and they had fallen down on it, and they told him of it. There was something said by Mr. Elliott at that time about forming an association of people for the purpose of taking up these lands. There were a number of groups of people interested in taking up these lands. I was mostly interested in our own group. Our group consisted of Mr. and Mrs. Dorsey and myself and Mr. Musser and Mr. Shaw. It was my understanding that Mrs. Haldeman and myself were to share just the same as the rest of the locators in our group. I suppose I made a mistake on my direct examination when I said that I was to get a third of all the locations. I meant I was to get a third of our group and Senator Dorsey was to get a certain interest in this thing for his group and I was to get a third of it. That is what I should have said. As a matter of fact, I didn't get a third of that group. I was disappointed in that. I don't think that I got what was coming to

(Testimony of George C. Haldeman.)

me. There was no question about it having been understood that I was to have a third of the interest of our group. I understood that Mrs. Dorsey was to have an interest in Senator Dorsey's group and Senator Dorsey himself was to have an interest. I remember that Mr. Strong was the head of a group that was in the association. I think Mr. Strong's partners were in his group. I think both of them were in, and Miss Gebauer, I think, and Mr. Andrews. I am not sure whether Mr. Andrews was in that or not. I think he was, yes. Mr. Dickinson was Mr. Strong's partner to whom I referred. I think there were two. I am not sure whether both of the Dickinsons were in it or not. I know there was the Elliott group in this association, but I don't know just who was associated with him. I knew Dr. Davis. He was associated with Elliott, [375] I think, in that group. The Elliott group consisted of Dr. Davis and Mr. Elliott. I know the Dr. McDonald group. Both of the Butlers were in his group; I am not sure whether they were in that group or not, or whether that was another group. I mean that they were a separate group from ours. I remember Jim McDonald. He was a son of W. Z. McDonald. W. Z. McDonald was one of the associates who was the head of a group. I am pretty sure Jim was in his father's group. I don't know who was in the Butler group. I never knew Mr. Butler before. I knew Senator Jones. He was the head of a group. His group consisted of himself and his son Roy Jones. My idea of the situation is that there

(Testimony of George C. Haldeman.)

were a number of men that got together. I have named six as the heads of the groups who formed an association for the purpose of locating the claims, and each one of these six represented a little sub group. I understood that these locations were made on behalf of the entire association. Regardless of whether I signed 40 locations, or whether I signed one, or whether I didn't sign any, if I was interested in this association through one of the groups, my interest was the same in all the locations; that was the understanding. When the conveyance was made to Elliott and Strong as trustees, that did not change the interest of anybody in the association that I know of. That was merely for convenience in handling it, and putting it into person's names. I do not know now what the interest of each one of these groups was in the entire enterprise. As a matter of fact some of the members of these groups who were entitled to an interest in these locations, did not locate at all. For example, 'Senator Jones' name did not appear on any of the location notices; neither did Roy Jones' name appear on any of the location notices, and that did not interfere with their interest as agreed on in [376] the entire group of names. I did not know why Senator Jones' name did not appear on any of the location notices. I do not know why Roy Jones' name did not appear. I do not know why Butler's name did not appear. Senator Jones was down in Santa Monica most of the time. I think Butler was in New York.

Testimony of George W. Dickinson, for Plaintiff.

GEORGE W. DICKINSON, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is George W. Dickinson. I reside in Los Angeles. I am engaged in the real estate business. I was a brother to Wallace D. Dickinson. He is dead. I am the George W. Dickinson whose name appears upon the location notice of the Zee No. 8 placer mining claim, embracing the Northwest quarter of Section 15, Township 31, Range 22, upon which also appear the names of Warren F. McGrath, O. C. Gebauer, L. W. Andrews, Wallace D. Dickinson, George C. Haldeman, Frank R. Strong and Stephen W. Dorsey as locators. I signed the original location notice. It was signed the very last of December, 1907. The records of Kern County also show that there are recorded therein, in addition to the location notice just mentioned, 200 other placer mining locations which also bear my name as a locator. I signed those location notices for my own benefit, and the other members of my association, associated with me. As Mr. Jones has stated, these associates were divided up into groups. There was the Strong group, consisting of myself and Mr. Andrews; the Jones group, Senator Jones and his son Roy; the Dorsey group, Senator Dorsey, his wife and Mr. Haldeman; the Butler group, A. H. Butler and [377] his son; and the Elliott group, Mr. Elliott and Mr. Davis; and

(Testimony of George W. Dickinson.)

the McDonald group, himself and son. The Butler group consisted of Mr. Butler and his wife and son. Mr. Strong and myself carried on the negotiations with the other members of the syndicate for and on behalf of our group. I attended a few of these meetings, a very few of them. Ultimately, at the end, I got 1,064 shares of stock of the British-American Oil Company out of the transaction. That was my proportion of our group. Our group was to get one-sixteenth—sixteen per cent, and I was to get one-third of our group. There were three in our group, Mr. Frank R. Strong, L. W. Andrews and myself. Wallace D. Dickinson was not in our group. He didn't get any interest in it. He was acting in this matter for all of us, all of the members of this whole syndicate. The affairs of this syndicate were carried on as the affairs of any other associated body would be. The affairs were carried on for the benefit of all those names that I have mentioned. There was no one person authorized to act for the entire syndicate.

Q. Was the authority to act delegated to any lesser group of the entire syndicate?

A. It was generally carried on by the heads of each group.

They sort of formed a committee or board that acted for the syndicate. That is the way and manner in which they dealt with outside transactions. I knew in a general way about the making of the deed of March 4, 1908, to M. Z. Elliott and Frank R. Strong, as trustees. I discussed the making of

(Testimony of George W. Dickinson.)

that indenture with Strong. I received nothing of value other than the shares of stock I ultimately received in the British-American Oil Company for the execution of that instrument. The fact was that I was a locator upon 201 of the claims—did not have any bearing upon the quantity of stock I ultimately received in the British-American Oil Company. I was simply to have one-third of our group's proportion. I was to receive [378] that amount simply because there were three of us in our group. The fact that I made 201 locations had nothing whatever to do with that. At the time the locations were made I advanced one-third of a thousand dollars. Our group advanced one thousand dollars. The amount of money that I advanced did not have anything to do with the amount of stock I ultimately received. I still hold my stock in the British-American Oil Company. I knew Miss Gebauer. She was not necessarily acting in the interest of our group. She acted in the interest of all the syndicate. I am not certain that I am the one who requested her to act.

Cross-examination.

(By Mr. WEIL.)

The transfer to Elliott and Strong, as trustees, made no change in the interests of the various members of the association in the property. That was made just for convenience sake.

Testimony of A. H. Butler, Jr., for Plaintiff.

A. H. BUTLER, Jr., a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is A. H. Butler, Jr. I am the son of A. H. Butler, Sr. My father is dead. I don't think I was a locator on any of these 207 claims you have been talking about. I had an interest in the British-American Oil Company. When it was originally formed, we formed the company to develop oil lands, but never got the deal through and [379] just dropped it. I think I had one share of stock in the company at that time, I am not sure. The Mr. Cole who appears in that was a man that was associated with Mr. McDonald and my father and myself and Mr. Thaddeus. Mr. Thaddeus was an artist from Coronado Beach. The men I have just mentioned composed the entire stockholders and first directors of the British-American Oil Company. That company never did anything. It never had an assets or liabilities prior to January 1, 1908. After the corporation was turned over to this so-called syndicate, I became a stockholder in the British-American Oil Company. I didn't get my stock; I left it in my father's name for some time, but eventually I got 1,330 shares. My father held it all for the time being. It was in A. H. Butler & Company's name. I had nothing to do with determining what quantity of stock should be turned over to the A. H. Butler

(Testimony of A. H. Butler, Jr.)

Company. I had nothing to do with that part of the deal. I was in the field. My father did the business end, the clerical end. I knew nothing about that transaction.

Q. What factor entered into the determination as to what amount of stock you should receive?

A. Well, when we went into it, I was to have a third, my father a third, and my mother a third; and I did the field work for my interest.

I was present in the field when the location notices were actually posted upon the lands. I don't think I had my name on any of the location notices, but I was out in the field helping. I was helping tack up the notices and mark the boundaries, and so on and so forth. I was 25 years of age at that time and a citizen of the United States. I am [380] a native born citizen. There was no legal reason why I was not qualified to make a placer mining location, either individually or as a member of an association.

Testimony of L. W. Andrews, for Plaintiff.

L. W. ANDREWS, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is Lewis W. Andrews. I am a member of the firm of Andrews, Toland & Andrews, counsel in this cause. I am the L. W. Andrews whose name appears upon the location notices of the Zee No. 8 placer mining claim embracing the Northwest

(Testimony of L. W. Andrews.)

quarter of Section 15, Township 31, Range 22. I signed the original location notices. The records of Kern County also show that I participated as a locator in 17 other locations of placer mining claims made at the same time in Kern County. I signed all of the location notices. I don't know as there was any particular fact that determined the limitation as to the number of locations in which I appeared as a locator. I signed that many locations and became an active locator on that many claims. I was called into this transaction by Mr. Frank R. Strong. Mr. Strong, Mr. Dickinson and I were interested in a number of different transactions, and this became one of them. I first became interested in this matter about the middle or the latter part of December, 1907. Eventually I received some stock from the British-American Oil Company. I received this stock because of these locations that were made. Mr. Dickinson has just testified he received 1064 shares of stock in the [381] British-American Oil Company, and I received the same amount that he did, which must be the correct amount. I did not put up any money on account of these 17 locations, that I made, as separate from the entire transaction. At the time of the locations I put up a third of a thousand dollars for use in the entire transaction. The fact that I received 1064 shares of stock in the British-American Oil Company was not controlled in any way by the fact that I put up this three hundred and thirty-three and a third dollars. It was not controlled in any way by the fact that my name appeared

(Testimony of L. W. Andrews.)

on 17 of these location notices. The factor which determined the proportion of my share was this. I was interested to the extent of one-third in what has here been termed the Strong group, which had a 16 per cent interest in the entire enterprise; and when that was carried through ultimately to the issuance of stock in the British-American Oil Company, that became the proportion of the entire stock that I received, or substantially so. I have visited these lands. I have been up through the Midway a good many times. I did not help pick out the particular lands which would be covered by my locations. I did not visit these lands to know them until some time after the locations had been made. There were funds advanced from time to time in a small way for the development of these lands, and I contributed my part. I have heard these transactions testified about by the other witnesses and they are substantially as they have detailed them. That is practically my understanding of the situation. I was present in Senator Dorsey's office at three or four conferences in the last of December, and I understood the interests of the various groups of individuals in the association to be substantially as Mr. Jones has testified. [382] It was my understanding in December, 1907, that the Butler group was to receive one-fifth, and each of the other five groups were to receive one-fifth of the remaining four-fifths in the entire enterprise. Mr. William Z. McDonald was present at some of those conferences. Mr. A. H. Butler, Sr., was not present. I didn't meet him in this transac-

(Testimony of L. W. Andrews.)

tion at that time. I met him subsequently. I didn't meet him at any time prior to the making of the locations. I had not seen him prior to that time. I understood that Dr. McDonald was in touch with Butler, and I understood that Butler's son, the young man that just preceded me here, was in the field, up in the Midway, and was assisting in the work there; but he did not participate in any of these conferences. I am still a stockholder of the British-American Oil Company.

Cross-examination.

(By Mr. WEIL.)

I had never heard of the British-American Oil Company at or prior to the time of making these locations. None of these locations were made on behalf of the British-American Oil Company. The circumstances under which the British-American Oil Company finally acquired this property are as follows:

The locations first were transferred to Mr. Strong and Mr. Elliott as trustees. That was sometime after the making of the locations. They held them as trustees for the entire association. Subsequently they were transferred by these trustees to the British-American Oil Company. My first acquaintance with the British-American Oil Company was at a time some weeks after the making of the locations, when there was a discussion as to how they would be held and how they would [383] be handled. A suggestion was made, I think by either Mr. Elliott or Senator Dorsey, that an Arizona corporation be

(Testimony of L. W. Andrews.)

organized. Dr. McDonald then tendered this corporation, which he said had been organized for a purpose that had failed, and that it had never transacted any business, and accordingly that corporation was taken over. That was my first acquaintance with it, or the first time I heard of it.

Q. Did you personally look into the affairs of this corporation, to see that it was free of all entanglements and had no debts and no liabilities, so that you could safely use it?

A. I went with Dr. McDonald and someone else, possibly Mr. Elmer Cole, to the Columbia Trust Company, to look over the organization papers, and satisfied myself from an examination of the records, together with what Dr. McDonald and Mr. Cole stated at the time, that the company had neither assets nor liabilities, and therefore I was willing to have it taken over.

Q. In the original discussion that preceded the location of these lands, was it the intent of you and your colleagues to form a regular placer mining association, such as was commonly recognized under the law; was that the purpose? A. Yes. [384]

Testimony of Helen R. Hopper, for Plaintiff.

HELEN R. HOPPER, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is Helen R. McDonald Hopper. I re-

(Testimony of Helen R. Hopper.)

side at 716 South Manhattan Place, Los Angeles, California. I am the daughter of the late William Z. McDonald. I am the H. R. McDonald whose name appears upon 80 placer mining location notices which are of record in Kern County, California. As well as I can remember—it has been ten years ago, I think—I was asked by my father or my brother, I don't recall which, to sign the location notices simply as acting for the other people with whom he was interested. That is as near as I can recall how I came to sign them. I had absolutely no interest in them. I did not put any money into them. I did not expect to put any money into the transaction. I have never claimed any interest in any of the lands that were covered by these locations.

I signed the deed by which myself and 20 others conveyed all of these locations to Frank R. Strong and M. Z. Elliott. I do not remember signing the deed. I can't tell you I remember the incident, but I know those names were familiar as being associated with my father. I absolutely received nothing of value for signing that deed. Absolutely never have I received anything from my father for anything. I received nothing of value on account of these transactions and the making of these locations. I do not claim any interest in any of these lands now. The situation was explained to me by my father or my brother, just as I explained it to the judge, that I was acting as an agent for the other men [385] with whom he was associated. At the time I signed these location notices I did not expect to claim any

(Testimony of Helen R. Hopper.)

interest in these lands myself. I do not know how the lands were eventually divided and who benefited by reason of these locations. I have never been advised on that subject.

Testimony of Addison C. Macon, for Plaintiff.

ADDISON C. MACON, a witness called on behalf of the plaintiff, having first been duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is Addison C. Macon. I reside in Los Angeles, California. I was living in the city of Los Angeles in 1907, 1908 and 1909. I think I am the same Addison C. Macon whose name appears upon 41 placer mining locations recorded in Kern County, California. I remember having signed the notices in the Lankershim Building in Los Angeles. It was in Mr. William Z. McDonald's office. I signed these location notices at the request of Mr. McDonald. I don't recollect just exactly what was said to me. It was a number of years ago. Something that I signed these on behalf of him and his associates. I did not have any interest whatever in these lands. I have never claimed any interest in them. I have never received anything of value by reason of the fact that I signed these location notices. I don't exactly remember having deeded these lands away to M. Z. Elliott and Frank R. Strong. There was something of the kind, but I can't remember just what; I think that I really don't recollect that. It was sev-

(Testimony of Addison C. Macon.)

eral years ago and there are several things that I don't remember exactly. I must [386] have done it, though, if my name appears there. Mr. McDonald, I suppose, asked me to sign this deed to Strong and Elliott. I did not receive anything of value for signing the deed. Prior to the time I signed the deed I did not claim any interest in these lands. I never benefited in any way from the making of these locations. I entered into this transaction and signed these location notices and the deed for the benefit of Mr. McDonald and his associates. I never had any idea that I would benefit personally by it in any way. I did not have any intention of entering into this transaction for my own personal benefit or gain.

Cross-examination.

(By Mr. WEIL.)

To the best of my recollection the persons who were Mr. McDonald's associates in this transaction were Mr. Elliott, Mr. Butler, Mr. Dorsey and Mr. Strong, and I think there were several others,—Mr. Jones and his father, but I don't remember any more. It was an association of men with Mr. McDonald, and I was locating on their behalf, as their agent. I do not remember of having located on behalf of the British-American Oil Company. None of these acts that I did were intended by me, or suggested by anybody to me, that they should be on behalf of the British-American Oil Company or any other corporation.

Redirect Examination.

(By Mr. HALL.)

I don't recollect that there was any writing which

(Testimony of Addison C. Macon.)

purported to or did indicate that I was acting as the agent for these people; I don't remember.

Q. What you said about being an agent was just what you [387] understood from the situation, was it? A. I think so.

Q. There was no express contract of agency that you know of, that was entered into between you and Mr. McDonald?

A. I don't recollect anything of the kind.

Q. He simply asked you to sign these for his benefit, was that it? A. Yes.

Q. And you acted for him in that matter?

A. I think I did.

Recross-examination.

(By Mr. WEIL.)

Q. When you said "his benefit" and "him," you meant him and his associates?

A. His associates, yes, he and his associates.

Redirect Examination.

(By Mr. HALL.)

I was never a stockholder in the British-American Oil Company or the Midway Oil Company.

Testimony of W. P. Casey, for Plaintiff.

W. P. CASEY, a witness called on behalf of the plaintiff, having first been duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is W. P. Casey. I reside in Imperial County, California. I am engaged in the fire insur-

(Testimony of W. P. Casey.)

ance and grain business. I was living in the city of Los Angeles in the early part of 1907 [388] and all of 1908 and 1909. I presume I am the W. P. Casey whose name appears upon 15 notices of location of placer mining claims which are recorded in the records of Kern County, California. To the best of my remembrance I only filed on two claims. If my name appears on any more I don't know what they are. You have read to me the list of a number of claims upon which you say my name appears as a locator. I do not remember having been a locator on all of those claims. I do not recall any of the numbers of any of the claims I was a locator on. I was taken up there with this party, and I was taken out to a place from our camp, some distance from the camp, and was told that this was such and such a stake, and I was told to make that location, and then go either a half a mile or a mile east, I think it was, and make another location, and come back to camp. Those two locations were all that I really put on the ground myself in person. Those are the only two I remember of specifically, and those are the only two I supposed I made. I don't think I was ever advised after that time, and up to the present time, that my name had been used upon other locations. It is so long ago my memory does not serve me. I went out with this party because my father was associated with W. Z. McDonald in some other things, other matters, and at the instance of Mr. McDonald, he asked me if I could get off, get away from my work and go up and make some locations on some oil

(Testimony of W. P. Casey.)

lands; and I was able to finally, and I went. I supposed it had something to do with my father's business, and did not ask into it particularly. I was a young fellow, working on a job about 12 hours a day, and it was a chance for me to get a little vacation, to be frank about it, and I went up on this trip; I wanted to see the country, and I thought I was doing some good for my father's association with [389] Mr. McDonald. I never received anything of value because of the making of these locations. At the time I made them I did not expect to receive anything individually of value. I thought my father would profit by it with his associations with Mr. McDonald. I thought my father, by assisting Mr. McDonald, would derive some benefit from this action, not that he was to receive anything from the effort itself particularly. It was simply to advance his relations with Dr. McDonald and thereby aid him. I understood my father was not to receive anything directly out of these lands that were located. I do not recall having signed the deed on March 4, 1908, conveying the lands upon which I was located, and other claims to the number of 207 in all, to Strong and Elliott. The only thing I remember is that I was asked to go to Santa Ana with some of these same gentlemen who were interested in the other deal, the original locations, and I signed certain papers which I was told was all right; I don't know whether it was a deed or what it was. I was not consulted in any way about the making of the deed or the purpose of it. I did not receive anything of

(Testimony of W. P. Casey.)

value or any benefit by reason of having signed it. I did not expect any. I never claimed any interest whatever in these lands upon which my name was used as a locator. I do not now claim any interest in those lands. I was never promised anything of value for the use of my name upon those lands. My expenses to the oil fields were paid. I did not receive anything to pay the expense with; they were paid by someone who was handling the trip. There was a paymaster along that took care of all expenses as we went along. I do not remember having received any compensation for that trip.

I have never been a stockholder in the British-American Oil Company. I do not claim the least interest in any stock in the British-American Oil Company that is held in the name of any other [390] person. I have never claimed any interest in the British-American Oil Company or any of its stock held in that way.

I am not now and never have been a stockholder or interested in the North Midway Oil Company. I do not remember having been promised any interest in the North Midway Oil Company by reason of making these locations and signing this deed.

My mother is Nettie G. Casey. I talked to my mother about making these locations and she said, "I don't see what they want me for; I don't know anything about it."

Cross-examination.

(By Mr. WEIL.)

I never was a stockholder or officer or director of

(Testimony of W. P. Casey.)

the British-American Oil Company. I do not want you to understand me to say that I think someone else signed my name to these locations, but the situation was this: It was ten years ago and I was acting under the guidance and the direction of Mr. McDonald, who my father told me I could depend on to not ask me to do anything I should not do; and I did not read all the documents through to know what I was signing; I took it for granted that he was taking care of it. I do not think that I am being accused of having done anything wrong, but I don't know but what my name might have been used as a stockholder when I didn't know about it. I might have had something put on the records that I have no knowledge of. I never heard of the British-American Oil Company until recently.

Q. You made these locations, as I understand it, at the request of Mr. McDonald, acting as agent for some association or other that was not disclosed to you; is that correct?

A. Well, I did not act in a sense as an agent. I was acting as a friend or acquaintance, who was doing the other fellow an [391] accommodation.

Q. In other words, you were not acting on your own behalf? A. No.

Q. You were acting in a representative capacity, whether it was on account of friendship or for money, you were acting for someone else's benefit?

A. Yes. I did not expect to derive any benefit out of it except, as I explained, that I presumed my father would derive some benefit from his associa-

(Testimony of W. P. Casey.)

tion. I did not expect to derive any benefit from the lands which I located. They were located on behalf of someone else. I didn't know who the someone else was; I assumed it was Mr. McDonald.

Q. Did you know he had any associates in the business?

A. Why, I didn't really know that he had till I went to Santa Ana with the other gentlemen who were in the party and signed the papers that I signed there, and then he appeared to have other associates.

Q. Did you ever meet a Mr. Elliott?

A. Well, if Mr. Elliott was the man whose machine we drove to Santa Ana in, I did. I don't remember his name; someone from Pasadena.

I don't remember the name Butler at this time. W. G. and W. Z. McDonald were the only persons in the party whose names I knew. They were the only two people I knew. I can't tell you accurately how many people were in our party at this time. There were at least two automobiles. There were at least six or eight people. There might have been more than that. There might have been more than two machines. I know of two machines that went out from [392] McKittrick. Beyond what I have told you, I don't know who constituted this association for whom I was acting. I don't know the names. I didn't know Senator Dorsey. I never heard of Senator Jones, or Roy Jones, or Mr. Strong, or Mr. Dickinson. I don't know any of them. When I said that I didn't know, I meant that I didn't remember having heard the names.

Testimony of Warren F. McGrath, for Plaintiff.

WARREN F. McGRATH, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is Warren F. McGrath. I reside in Los Angeles. I am engaged in the real estate business. I lived in Los Angeles during the years 1907, 1908 and 1909. I am the Warren F. McGrath whose name appears, with the names of seven other persons, upon the Zee Placer Mining Claim No. 8, embracing the Northwest quarter of Section 15, T. 31, S., R. 22 East. I signed a number of those location notices; the exact number I could not tell. I can identify my signature to any. That is my signature on the location notice which you have just handed to me. That is a location notice covering the West half of the Northwest quarter and the Northeast quarter of the Northwest quarter and the Southwest quarter of the Northeast quarter of Section 22, Township 21 South, Range 14 East. I signed these location notices at the request of Mr. Strong and his associates. I couldn't say who spoke to me about it personally. Mr. Strong, Mr. Dickinson and Mr. Andrews—there were a number interested. I was associated with those gentlemen at that time. I was connected with them in the real estate business. I was not [393] a member of the firm of Strong and Dickinson. I was there with them, associated with them. I had business relations with them and had my desk in

(Testimony of Warren F. McGrath.)

their office. It would be impossible for me to give you the exact conversation I had with Mr. Strong or who ever it was spoke to me about this matter. It was as a matter of accommodation to a number of associates with him that were locating these claims.

Q. Do you know how many locations your name was to be used upon?

A. Only by the—if I had kept a record of the number I signed, I would know exactly. I knew, of course, the different locations, and was told the rights I had.

I only knew the exact description of the lands on which my name appeared as a locator as I had access to the papers themselves.

I had no financial interest in these transactions. I did not put any money into them. I did not expect to put any money into them. I did not derive any benefit in a financial way from them. I had only a representative interest in these specific lands upon which my name appeared as a locator. I cannot recall all of the names of the persons, because I didn't know all of them. I knew a number that were close friends, and they had a number of associates, with whom I was more or less acquainted in a general way only, and some that I did not know. At the time I signed these location notices I expected to claim some portion of the lands that would be located with these location notices, only as a representative. So far as the Government was concerned, I would consider it a personal claim.

Q. But did you ever assume to exercise any act of

(Testimony of Warren F. McGrath.)

ownership over any portion of these lands upon which your name appeared as [394] a locator?

A. Only as a representative, I should say so.

Q. Not in your individual capacity, then?

A. No, sir.

I was never promised anything of value by reason of the fact that I responded to this request for the use of my name upon these locations. I did not expect to get anything of value out of it. I have never been a stockholder in the British-American Oil Company. I do not now claim any interest in the holdings or the property of that corporation in any way. I never was paid a cent on account of these locations. I signed the deed on March 4, 1908, conveying these lands, together with other lands, to M. Z. Elliott and Frank R. Strong. More than likely Mr. Strong suggested that I sign this deed. I do not remember specifically that it was Mr. Strong. I did not receive anything of value for executing that deed. I cannot state that I know what the trusteeship was that Strong and Elliott held under that deed, only from general knowledge. I don't know that I have anything specific as to the exact trusteeship or the exact interest. I could not say as to that. I knew a number that were interested, and it was for their general interest, but just how it was divided I had no specific information. That was not a trusteeship for my personal benefit. I don't know that it was for the benefit of a person known as B. Adams. I don't know any such man. I don't know any such man as A. W. Casey. I don't know

(Testimony of Warren F. McGrath.)

whether it was for the benefit of N. G. Casey or W. P. Casey. I can't say that it was for the benefit of Wallace D. Dickinson; I don't know that he had any personal interest in it. I think Mrs. L. B. Dorsey was probably one of the interested parties. I don't know G. A. Horn. I don't know anything about Addison G. [395] Macon's right in that trusteeship, or how she was a beneficiary. I don't know Albert G. Shaw or anything about his participation in that trusteeship. I do not now claim a personal interest in the Northwest quarter of Section 15, involved in this suit. The only thing I ever claimed was as a representative.

Cross-examination.

(By Mr. WEILL.)

I was acting as agent or representative for Mr. Strong and his associates. I can tell you the names of some of the associates that I was acting for. I knew Mr. L. W. Andrews, Mr. George W. Dickinson, Frank R. Strong, and Mr. Elliott, and Senator Dorsey, and Mr. McDonald, and two or three others that perhaps I don't recall their names readily. Mr. Jones was one of the number, and his father. There were others that I do not now recall. It was my understanding that the conveyance was made to the trustees for the benefit of the same people that I had originally made the location for. I was never a stockholder, director or officer in the British-American Oil Company, or interested in it in any way. I was not acting as its representative or as

(Testimony of Warren F. McGrath.)

its agent in making this location. I never heard of it at that time. I was not making these locations for its benefit nor acting in its behalf in any way at all.

Testimony of J. E. McDonald, for Plaintiff.

J. E. McDONALD, a witness called on behalf of the plaintiff, being first, duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is James E. McDonald. I reside in Los Angeles, California. [396] I am a son of the late William Z. McDonald. I was living in Los Angeles in 1907, 1908 and 1909. I am the same J. E. McDonald whose name appears upon 52 notices of location of placer mining claims recorded in Kern County, California. I became a locator on those lands because I was associated with my father in business, and I was interested with him in the location of these lands. My father first suggested to me that I become a locator on these lands. My father had been associated with Mr. Butler. I don't know whether he was at that time actively associated with him in any particular business, that is, whether there was any real association or tentative association at that time. I knew of a corporation known as the British-American Oil Company. I don't recall whether I was one of the original incorporators. If I was it was only as an incorporator. My father and Mr. A. H. Butler, Sr., were associated in that

(Testimony of J. E. McDonald.)

corporation. I knew about the business of the British-American Oil Company prior to January 1st, 1908. There was no business transacted by the corporation. It was formed for the purpose of transacting business, but it never got to the point where there was any business to transact. I became automatically a stockholder in the British-American Oil Company as soon as the company was organized and the different interests were designated. There was never any of the stock actually placed in my name to my knowledge on the records of the corporation. My father sold the stock that was held in his name. The portion of it that was his, he sold. I can't tell you the month; I think it was last year, to Mr. Heaton, and I believe Mr. Strong. That was a transaction that I only know of in a general way. I don't know just exactly who did get the stock. It was a proposition, and he sold it. My father died in November, 1917. None of the stock was ever actually transferred to my name. It was assigned. I had some of it in my possession at different times. I have none of it in my possession now. I [397] disposed of my interest in it some time ago.

Cross-examination.

(By Mr. WEIL.)

I remember the circumstances under which these locations which I participated in were made. In the fall, I should say in November or December, or thereabouts, of 1907, I was engaged in the real estate business. My father had prior to that been in

(Testimony of J. E. McDonald.)

the real estate business, and I took over the real estate business when he became interested in the oil business. And he came to me and said that he had under consideration the location of certain lands, he and others in Kern County; and if I would aid him in doing the outside work, that I would participate in any profits that were derived for his interest in the syndicate that was locating this land. I think I know who constituted this syndicate. There were six groups of people, containing anywhere from two to three, possibly four, I don't know, but I think three was all that there was in any one group, which would make approximately 15 or 20 people, offhand. In what was known as the William Z. McDonald group was my father and myself. In the Dickinson group there were Mr. Dickinson and Mr. Strong and Mr. Andrews. In the Jones group there was Senator J. P. Jones and his son, Roy Jones. In the Dorsey group there was Senator Dorsey and his wife. In what was known as the Elliott Group, I believe Elliott and W. J. Davis. And in the Butler group there was A. H. Butler, Sr., and Mrs. Butler, I think, and A. H. Butler, Jr. I believe that is the line-up, as I remember it now. I did some of the work in reference to the making of these locations. I was in the field about three or four weeks. My particular job was flagging the stakes and running rough surveys, locating the center stakes of the different sections, so that [398] we were sure to post the notices in the right place, and looking after the care of the men when

(Testimony of J. E. McDonald.)

they got there, and so forth, and looking up the records in the Land Office for the land that was already patented, and the checking up of final proofs of labor in the recorder's office, and seeing that the proofs of labor were filed, and so on and so forth. All of this work that was done by me was done on behalf of this association of which I was a member. I did not understand that the number of locations on which my name appeared bore any relation to the interest I had in the association. My interest in the entire amount of land that was located was absolutely not controlled in any way by the number of locations on which my name appeared. My interest in the syndicate amounted to one-third of what the McDonald group profited by its membership in the syndicate, composed of the men I have named to you, and maybe some others I do not know now. I was not acting on behalf of the British-American Oil Company at this time, or making locations on its behalf. The work that I did was on behalf of my association, and not on behalf of the British-American Oil Company. It was on behalf of the syndicate.

Redirect Examination.

(By Mr. HALL.)

My father was an American citizen. He was born in Wooster, Ohio. He was qualified under the mining laws to make a placer mining location in the year 1907 and 1908.

Q. How extensive, and over what area, were these locations scattered? Just give us some idea of the extent of the country that they covered.

(Testimony of J. E. McDonald.)

A. Why, roughly speaking, they extended from some—well, now, there were some locations—this section 15, 31–22 is south [399] of McKittrick. However, the majority of these locations covered the territory ranging along the east slope of the Mount Diablo Mountains, from about 15 miles north of McKittrick to—oh, the same distance south of Coalinga. There would be perhaps a section or quarter section of ground here, and then some might be skipped, or there might be several. All along in a row.

Q. They were practically scattered all the way from the Midway to Coalinga, weren't they?

A. They were scattered, yes, but not from Midway to Coalinga. I don't know of anything that far north. I said around 15 miles south of Coalinga. I could tell pretty close from looking at your map there.

I don't remember of any locations in the Lost Hills country. I do remember of some locations in the Devil's Den country. The Devil's Den is north of McKittrick. While I was in the field my father was there. He was active in the directions about making these locations. He was to the extent of seeing that everybody was fed and housed, and so forth and so on; that is, he was up there to sort of check up that, more than anything else. He knew about the purpose of that expedition up there at that time. Mr. M. Z. Elliott was there too. Mr. Elliott was a citizen of the United States, qualified to take up placer mining locations. Mr. Elliott died about

(Testimony of J. E. McDonald.)

four years ago, and I believe he was about 38 years old when he died. I don't know where he was born. Of my own knowledge I don't know whether he was a citizen of the United States. I know that he voted.

I had a map or plat in the field while I was making these locations. I prepared it, drew it myself. I prepared it in 1907. There were markings on that plat so that I could tell it if I saw [400] it. I drew the map. I don't know where it is now. I made a tracing of it. There is probably a hundred of them by this time, blue-prints. I do not know where you could get hold of one of them.

Mr. HALL.—Have any of you gentlemen a copy of that map?

Mr. WEIL.—I have not.

Mr. PRINGLE.—I have not. I never have seen it.

I don't recall whether or not that map was designated as the map of any particular company or concern. I will explain that in this way: I made—my course in the university was that of mining engineer, and while I was in the field I made a number of pencil maps, and I made one tracing, and then later on, six months afterwards, I made one showing the approximate location of all the lands; and I have made, I guess, a hundred maps. So as to what particular date or day, or for whom the map was made, I cannot recall, unless I would see the map, and then I don't know whether I could tell you accurately.

(Testimony of J. E. McDonald.)

Q. Isn't it a fact that the map you had in the field when you were making these locations in December, or the 1st of January, 1908, read on the face of it, in substance, it was a map of the holdings of the British-American Oil Company in that field?

A. As a matter of fact, I cannot answer the question as to just what map I had in the field at that time. I know I had a map, because it was from that map I worked, but just what map it was I had in the field at that time I don't know; nor I don't recall at this time any map that had that language on it.

I got the descriptions of the particular land that they wanted to locate from my father. I don't think my father was interested in any of these lands under different locations prior to the time [401] we made the locations in question. I don't know whether Mr. Butler or Mr. Elliott were interested in those lands prior to these locations.

Testimony of Frank R. Strong, for Plaintiff.

FRANK R. STRONG, a witness called in behalf of the plaintiff, having first been duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is Frank R. Strong. I reside in Los Angeles. I am engaged in the real estate business. I was living in Los Angeles in 1907, 1908 and 1909, a part of the time; I was east for about nine months during that time. I am the same Frank R. Strong

(Testimony of Frank R. Strong.)

whose name appears upon 17 placer mining locations notices which are recorded in the records of Kern County, California. My name appears upon the location notice of the Zee No. 8 placer mining claim, which embraces the northwest quarter of Section 15, the lands involved in this suit. I signed those location notices personally. I signed those location notices because we decided to go through and take up these different lands, and I was simply one of many to sign these different locations. I was representing my own crowd in it, and also the other members of the syndicate or association. I first became interested in this transaction through Mr. Dorsey and Mr. McDonald. I should say I first became interested in it some time about the middle of December, 1907. That was the first time that I heard of locating these lands. I believe it was Senator Dorsey who took the question up with me. Senator Dorsey died about two or three years ago. He died long after the location of these lands. My recollection is that [402] Senator Dorsey said that there was some open lands, some good oil lands there that could be located. He did not tell me how he knew those lands were subject to location. I don't remember that he told me that. I think he told me that he got his information as to these lands being subject to location, and as to their value as to oil lands through Mr. McDonald—Dr. McDonald. I had talked to A. H. Butler, Sr., in 1907, but not with regards to locating these lands.

Q. Well, did you at any time prior to the day the

(Testimony of Frank R. Strong.)

lands were actually located, on January 1, 1908, have any talk with A. H. Butler about these particular lands which were afterwards located?

A. Yes; one time in 1907 I talked to him.

Q. When was that?

A. I would say in the summer of 1907.

Mr. Butler did not point out to me or indicate to me whether or not there were any locations upon the land. He was talking to me then about financing a pipe-line through that territory; he only talked to me one afternoon, an hour, maybe. In that conversation he did not tell me of any lands that were open and subject to location, but simply said that he thought that would be oil territory. At that time he was president, I think, of the Dabney Oil Company up in that district. There was nothing said at that time about locating these lands. I can't say whether he told me at that time whether or not he and his associates, or he alone was interested in any locations of oil lands in this vicinity.

Q. Do you know now whether or not at that time Mr. Butler, or any of his associates, were interested in any locations upon the lands which were afterwards located by you and your associates?

A. Do I know now? [403]

Q. Yes.

A. I understand now that he had located a number of those same holdings; yes, sir.

Q. Prior to the time you made the locations, did Mr. Butler ever tell you he was interested in any of

(Testimony of Frank R. Strong.)

these lands that were covered by the locations of January, 1908?

A. I don't know that he did. His whole talk with me was about getting a pipe-line through there, and helping him finance it.

I had known Mr. Butler ever since 1886. That was just how he happened to drop in and see me.

During 1907 Mr. Butler was in New York most of the time, and also had an office in London; he was a broker. I don't know that he was a promoter. When I first knew him he was a real estate man. I imagine it was about the 20th—right along the latter part of December, 1907, that we finally determined to participate in this syndicate. There was a meeting of the various members of this syndicate in Senator Dorsey's office. Those present were Doctor McDonald and Senator Dorsey and Mr. Elliott, and I think both Senator Jones and Roy, and myself, and probably Mr. Haldeman. The first time—at that time we associated ourselves together for this common enterprise.

Q. Was there any determination reached at that time to act—this body of men—in concert and as a unity in the carrying out of this plan?

A. Not as a unity; no, sir.

Q. The lands that you were to acquire were to be divided up personally among you, or were they to be held by this association?

A. We didn't decide that right at that time.

Q. When did you decide that question? [404]

A. Well, later on it was deeded to me as trustee

(Testimony of Frank R. Strong.)

for the association, and later deeded to the British-American Oil Company.

It must have been some time in January, 1908, that it was decided to deed it to me as trustee. We made some plans in December for making these locations, when we associated ourselves together.

Q. Well, was the acting as a whole in making those plans, or were those plans just the plans of the individuals?

A. I would say they were the plans of the heads of those different groups.

Q. Well, did they all meet together and agree upon a plan, or did each one act as he saw fit?

A. Well, at this first meeting, the gentlemen I have named were there. Afterwards different ones would be there. Mr. Andrews was there several times, and Mr. Dickinson was there.

Q. That does not answer my question. Did you act as a group in carrying out these plans?

(No answer.)

Q. This association, or syndicate, which was it?

A. Well, my idea is they are the same thing, association or syndicate.

Q. And what was it?

A. Simply these different groups of people that got together. I represented Mr. Dickinson and Mr. Andrews at these different meetings, and if Mr. Jones was there he represented his father.

Q. Did you all agree as to the mode of procedure that would be pursued?

A. We had no agreement in the early part of 1907

(Testimony of Frank R. Strong.)

It was done hurriedly and we really didn't know what we were going to do. [405]

Q. Well, did you all act together in the carrying out of the plans to locate these lands?

A. We didn't act together because I put up a thousand dollars and Senator Dorsey only put up \$500, and some of the others didn't put up any.

Q. Well, you acted with different degrees of intensity. But did you, for instance—you said, "Well, I will take my group of locators and I will go and locate a certain number, and Mr. Dorsey will take his group of locators and go and make a certain number of locations," or did you simply say, "We will go out as one common enterprise and locate these lands"?

A. Well, my idea was we were to locate the lands possibly as a whole, together.

Q. And acting in this association?

A. As for the association; yes, sir.

Q. When was it finally determined that the lands should be conveyed to you and Mr. Elliott?

A. I couldn't give you the date, Mr. Hall, on that, but it was after January, 1908.

Q. Who was present when that conclusion was reached?

A. I couldn't say exactly who was present. My recollection is now that Mr. Roy Jones was there, Mr. Elliott, Mr. McDonald, and I think Mr. Andrews was there at that meeting, and myself.

Q. And was it agreed by all of the people who were there at that meeting that the lands should be

(Testimony of Frank R. Strong.)

conveyed to you and Mr. Elliott as trustees?

A. I think so; yes, sir.

Q. At that time did you know B. Adams?

A. I don't know B. Adams; no, sir.

Q. Did you know A. W., N. G., or W. P. Casey?

[406]

A. One of them that was on the stand this morning?

Q. Yes. A. I don't recollect Mr. Casey.

Q. Did you know Wallace D. Dickinson?

A. Yes, sir.

Q. Was he present? A. No, sir.

Q. Was L. B. Dorsey present? A. No, sir.

Q. Was O. C. Gebauer present? A. No, sir.

Q. G. A. Horn present? A. No, sir.

Q. F. J. Haldeman present?

A. I think Mr. Haldeman was.

Q. That is Mrs. Haldeman, the wife of George C. Haldeman?

A. No; Mrs. Haldeman was not there.

Q. Addison C. Macon, was she present?

A. No, sir.

Q. Henry L. Musser present? A. No, sir.

Q. H. R. McDonald present? That is, Helen R. McDonald? A. No, sir.

Q. J. E. McDonald. Was he there?

A. No, sir.

Q. Albert G. Shaw? A. No, sir.

Q. Was Warren F. McGrath there?

A. No, sir.

Q. Did any of the persons whose names I have

(Testimony of Frank R. Strong.)

just read to you, [407] either verbally or in writing, direct you to receive the title to this property in trust, other than such declaration as may be implied from the deed which was actually executed?

A. That was all; they executed the deed.

Q. There was no conversation between you and them as to this conveyance to you?

A. When it was signed?

Q. No. I mean outside of the actual instrument itself.

A. I might have spoke to Mr. McGrath and Miss Gebauer and Mr. Wallace Dickinson, probably.

Q. Was there any explanation given by you to any of these people as to your trusteeship, or what it should consist of? A. No, sir.

Q. Did you ask any of these people outside of possibly Miss Gebauer and Mr. McGrath to designate or nominate you as their trustee in this deed?

A. No, sir.

Q. Was there any person outside of the persons present at this meeting who determined, or assisted in determining that the lands should be conveyed to you and Elliott as trustees? A. No.

Q. Did you, yourself, or did Mr. Elliott in your presence, make any declaration of your trusteeship to these people who conveyed the lands to you?

A. I never made any declaration. You mean in writing, Mr. Hall?

Q. Either in writing or verbally.

A. Well, the crowd was there. It was simply un-

(Testimony of Frank R. Strong.)

derstood we were holding it according to our original understanding there.

Q. Now, what was your original understanding?
[408]

A. That Mr. Butler had a fifth of his people. The rest of us was divided into one-fifth of four-fifths.

Q. When was that understanding reached?

A. Oh, that was early when we first began to put up the money.

Q. Was that before the locations were made?

A. Yes, sir.

Q. Were any of the others outside of the members of this so-called association consulted about the division of this property that you have just mentioned?

A. These locators?

Q. Yes. A. No, sir.

Q. Were these locators consulted in any way by you or your associates, that you know of, as to what would become of the rights they had in the lands under this division?

Mr. WEIL.—One minute. In view of the fact that all of these witnesses—that is, certain of these locators have testified that they had no personal interest in there but were acting as agents on behalf of the association, I think it is a rather violent assumption, and a fact not in evidence, when counsel refers to their personal interest in land.

The COURT.—He may answer the question.

A. Will you repeat the question?

(Last question read by the Reporter.)

A. No.

(Testimony of Frank R. Strong.)

Mr. WEIL.—Now I would like to know which locators you are referring to.

Mr. HALL.—I am referring to B. Adams, A. W. Casey, N. G. Casey, W. P. Casey, Wallace Dickinson, L. B. Dorsey, O. C. Gebauer, G. A. Horn, F. J. Haldeman, Addison C. Macon, Henry L. Musser, Warren F. [409] McGrath, H. R. McDonald and Albert Shaw.

A. No, sir.

Q. What factor or factors determined this division of these lands? A. Why, Mr.—

Mr. WEIL.—Now, one moment. There was no division of the lands agreed on.

Mr. HALL.—Well, the interest in these lands.

Mr. WEIL.—There were undivided interests there.

Mr. HALL.—All right.

A. Mr. McDonald brought it, I understand, to Mr. Dorsey, and said that Mr. Butler demanded a fifth of whatever was done with these locations.

Q. What factor or factors determined the interests of the other parties in these locations?

A. The other parts were simply divided up amongst the different groups equally.

Q. Was the fact that some of you had put up money a factor which determined how much the different interests should be?

A. No, sir; that money was to be returned.

Q. How much money did you put up?

A. I first put up \$233, I think, the first check.

Q. And then the next check?

(Testimony of Frank R. Strong.)

A. That was in December, 1907. Then I made up enough to make it \$333 early in January. Mr. Andrews, Mr. Dickinson and myself put up a thousand dollars total.

Q. As I read this list, will you tell me how much each one of these persons put up, how much money to carry through—

A. As nearly as I can. [410]

Mr. WEIL.—Now, one moment. We object to that as immaterial, irrelevant and incompetent how much money anybody put up. I don't think the determination of the people's rights under the Government of the United States is governed by the amount of money they are able to put up, Government counsel to the contrary notwithstanding, and I submit that a man who has no money has as much right to locate on the public lands as a man who is a millionaire, and I therefore object to that as entirely irrelevant to this case.

The COURT.—It would have no relevancy except that it might show the relationship between these people, and whether they were to share in this property.

Mr. WEIL.—It is admitted that these people were merely acting as agents and had no interest in it.

Q. (By Mr. HALL.) B. Adams?

A. He put up no money that I know of.

Q. He put up no money? A. No.

Mr. PRINGLE.—That he knows of.

Mr. HALL.—All I want is the truth.

Mr. PRINGLE.—Not the truth, but all he knows.

(Testimony of Frank R. Strong.)

Mr. HALL.—Yes; all he knows and everything he knows. I am perfectly willing the Court should have it.

Q. Lewis W. Andrews? A. Yes, sir.

Q. How much?

A. Well, he put up a third of that thousand dollars, in two payments, I believe.

Q. A. W. Casey? A. No. [411]

Q. N. G. Casey? A. No, sir.

Q. W. P. Casey? A. No, sir.

Q. Wallace D. Dickinson? A. No, sir.

Q. You said, "No, sir." Do you mean that you don't know, or that they did not put it up. Please indicate.

A. I am pretty sure those people did not put it up.

Q. And George W. Dickinson? A. Yes, sir.

Q. He put up how much?

A. The same as Mr. Andrews and myself.

Q. And Stephen W. Dorsey. How much did he put up? A. I think \$500.

Q. L. B. Dorsey. How much did she put up?

A. I don't know.

Q. M. Z. Elliott. How much did he put up?

A. I don't know what Mr. Elliott put up.

Q. Do you know whether or not he put up anything?

A. Well, I think he might have afterwards. He was doing field work at the time, so we didn't—

Q. O. C. Gebauer? A. No, sir.

Q. What? That she did? A. She did not.

Q. She did not. G. A. Horn?

(Testimony of Frank R. Strong.)

A. She did not—he did not.

Q. George C. Haldeman?

A. He did not. [412]

Q. F. J. Haldeman? A. He did not.

Q. That is Mrs. Haldeman.

A. She did not put up any money to my knowledge.

Q. Addison C. Macon. Did she put up any money?

A. No, sir.

Q. Henry L. Musser. Did he put up any money?

A. No, sir.

Q. Warren F. McGrath. Did he put up any money? A. No, sir.

Q. H. R. McDonald. Did she put up any money?
That is Helen R. McDonald.

A. Not to my knowledge.

Q. Did J. E. McDonald put up any money?

A. No, sir.

Q. Did Albert G. Shaw put up any money?

A. No, sir.

Q. Did William Z. McDonald put up any money?

A. I don't think any of the original money; he was also doing the field work.

Q. Did Roy Jones, or his father, Senator Jones, put up any money? A. Yes, sir.

Q. How much did they put up?

A. Close to a thousand dollars.

Q. Is it or is it not a fact, Mr. Strong, that the interests of these several groups in the lands involved was determined partially by the work and labor which they had done in getting this association or

(Testimony of Frank R. Strong.)

syndicate organized and in existence, and partially by the amount of money which each one of you put up [413] to further the interest of the association or syndicate?

A. It was not by the money because we put up a third of that original \$2,500 and we only got an eighteenth of the holdings.

Q. I want to refresh your memory. Do you remember that you were sworn as a witness before George S. Welch, a notary public? A. Yes, sir.

Q. In Los Angeles on October 19, 1911, in the suit of the British-American Oil Company vs. the Pioneer Midway Oil Company.

A. I do. I have read that deposition.

Q. You have read this testimony?

A. Yes, sir.

Q. I want to refresh your memory by reading you some questions that were propounded to you by Mr. Henry Ach, who represented the Pioneer Midway Company, and your answers to them.

A. Yes, sir.

Mr. HALL.—I read you these questions, and I want you to follow me closely.

Mr. WEIL.—Please show them to him.

Q. (By Mr. HALL.) Yes; I will let you read them as I read them (reading):

“Q. Well, what was the trust upon which you held that deed, or took that deed?

“A. Why, it was simply to deed it to us, and we was going to formulate some plans later on

(Testimony of Frank R. Strong.)

and act on them. We had no regular agreement with them.

“Q. Well, but what was the trust that you held it upon?”

“A. We held it for the other locators that were in there.

“Q. In what proportions?”

“A. In the proportion to the amount which they put up, their money, the different ones.”

Now, after reading that, another question (resuming reading):

“Q. Had anybody put up any money at that time?”

“A. That was my understanding.

“Q. Had anybody put up any money at that time? A. Yes.

“Q. At that date? A. Yes, sir. [414]

“Q. Who?”

“A. Mr. Elliott, I think, Mr. Andrews, Mr. Jones, and Mr. Dorsey and Mr. Dickinson.

“Q. Who did they put it up with?”

“A. Well, the money was turned over afterwards to Mr. Elliott.”

Now, does that refresh your memory in any way as to whether or not the amount of money that was put up by these various people in the association controlled the interest which they were to receive in these lands?

Mr. WEILL.—To which the defendants object for the reason that it is irrelevant, immaterial and incompetent, and an apparent attempt on the part of

(Testimony of Frank R. Strong.)

counsel for the Government to impeach his own witness.

The COURT.—He may answer.

Mr. WEIL.—We save an exception.

A. No; it does not. If I may explain something there, I would like to do it. At that time, in 1911, I was probably as busy as anybody in Los Angeles. We were subdividing and selling anywhere from thirty to forty lots a day. Mr. Ach came down from San Francisco and suddenly called me up to some office; I forget where it is now. I had no time really to look up the data. I had not discussed it thoroughly, and of course now I have since this case has been coming up. For two months, I guess, or three months, I have been refreshing my memory and scouring it up, and I really am clearer now a great deal than I was at that time. I have read all of those depositions of Mr. Elliott's and Mr. Halde-
man's. In fact, I guess the same copies that you have there. I have also talked with Mr. Jones; I have talked with Mr. Dickinson; we have gone back through our old files and looked up a few old letters we had, and in a general way given it a lot of thought. I have discussed it only shortly with Mr. Andrews, who is our counsel in this case.

Q. (By Mr. PRINGLE.) He is your associate as well as your counsel? A. Yes, sir. [415]

Mr. Andrews is a director of the British-American Oil Company at this time. I think Mr. Elliott prepared this deed of March 4, 1908, between the locators and myself. I did not.

(Testimony of Frank R. Strong.)

Q. And as I understand you, there was never any written or verbal declaration of what your trusteeship was? A. No, sir.

There was no actual consideration from me to the locators for this deed. We held the title in our names as trustees until May 4, 1909, when the deed was made between myself and M. Z. Elliott as trustees to the British-American Oil Company. We did not convey the land to the British-American Oil Company sooner because I was East pretty nearly all of that time. I came back about March or April, 1909, and I believe that deed was made to the British-American Oil Company just after I returned from the East. I had been absent for about 9 months. I might have been present, but I don't remember, when it was determined that Elliott and I should make this deed to the British-American Oil Company. I do not know how it was determined to put the land into the corporation. I imagine it was simply to take it out of our hands as trustees. We were holding it for the stockholders then of the British-American Oil Company; and we had held it for them ever since the time the land was deeded to us. I do not remember who specifically directed me or who instructed me to make this deed. At the time I made the deed I did not consult with any of them as to whether or not they were willing that I should make the deed.

Q. At the time you made the deed, did you consult with any of the locators who were not stockholders in the British-American Oil Company, as to your

(Testimony of Frank R. Strong.)

right to make the deed? A. No, sir.

Q. And do you know whether or not Mr. Elliott made any such inquiry, or had any such discussion with these people in your presence? [416]

A. Well, my recollection is that Mr. Elliott originally got the deed executed by practically all of the locators; not myself.

Q. But when you and Mr. Elliott came to deed over to the British-American Oil Company, do you know whether or not Mr. Elliott inquired of the original locators, who were not stockholders of the British-American Oil Company, if he and you might have their consent to make this deed to the British-American Oil Company? A. No; I do not, no, sir.

Q. Well, whose consent did you then consider was necessary for you and Mr. Elliott to get to make this deed to the British-American Oil Company?

A. If I remember right, Mr. Elliott brought the deed to me at the time. Of course I knew I was holding it for—he was also president of the British-American Oil Company at that time. I was simply a director, and it was being deeded, of course, to the corporation which I was interested in, and I had simply signed it with that understanding to convey the property to them.

Q. Well, who were you acting as trustee for in that conveyance?

A. I considered I was acting as trustee for these people, Mr. Andrews, Mr. Dickinson, Mr. Dorsey, Mr. McDonald.

Q. In other words, you were acting as trustee for

(Testimony of Frank R. Strong.)

the persons who were then stockholders in the British-American Oil Company?

Mr. WEIL.—Now, one moment. They were not stockholders at that time.

A. That is what I was going to say.

I didn't consider I was holding it at all for any locators that were not—I didn't consider them at all in this transaction. I was simply considering the people who belonged to this association. And those people were the same people who would become stockholders of the British-American Oil Company when the stock should be issued. The members of this association were simply holding this empty shell known as the British-American [417] Oil Company for the purpose of distributing the stock after these lands were conveyed to it. The deed from the trustee to the British-American Oil Company was on March 4, 1909, and the stock was not formally issued until 1910.

The COURT.—There was a meeting of the purported stockholders in 1908.

Mr. HALL.—Yes.

The COURT.—A meeting of Dorsey, Elliott, McDonald and those people.

Mr. HALL.—Yes. And I think those people were the heads of the various groups, as I understand it.

The COURT.—Yes.

I accepted this deed of March 4, 1909, as a trustee for heads of this association. They were practically the same people who were then interested in the British-American Oil Company. Since that time I

(Testimony of Frank R. Strong.)

have not rendered any account of the trusteeship to B. Adams, A. W. Casey, N. G. Casey, W. P. Casey, Wallace Dickinson, L. B. Dorsey, O. C. Gebauer, G. A. Horn, George C. Haldeman, F. J. Haldeman, Addison C. Macon, Henry L. Musser, Warren P. McGrath, H. R. McDonald, or Albert G. Shaw. I have not rendered an account of my stewardship in this matter to anybody.

Cross-examination.

(By Mr. WEIL.)

Prior to the date of these locations, and in December, 1907, this association was formed for the purpose of making the locations. This association consisted of six groups. The heads of these groups each represented a number of other persons who were members of other small groups. When I said I was trustee for the heads of the groups I meant I was trustee for all of the interested parties. Before the lands were located, in December, 1907, the respective interests of the parties were determined. Butler had demanded a fifth interest, and the other groups divided equally what was left. That was the only understanding that governed the division of the interests there. Butler insisted on a fifth and the rest divided equally what was left. That division was made regardless of the amount of money they put up, and regardless of the number of location notices which [418] they signed. There was no agreement made prior to the locations that they should be conveyed to me as trustee. There was no agreement made prior to the locations that they should be

(Testimony of Frank R. Strong.)

conveyed to a corporation. There was no agreement at all in reference to the disposition of these lands, either written or oral, or any understanding of any kind, other than that the locations were for the benefit of the association, and that the assessments should be divided amongst these groups in the manner in which I have already indicated. It was understood that Mr. Elliott and I should hold these lands in trust for the benefit of the association in the same proportions that had been agreed upon prior to the locations. I never claimed these lands individually because they had been conveyed to me. Mr. Elliott never claimed them individually. Both Mr. Elliott and myself always considered that we held these lands for the beneficial interest of the association. The money that was advanced by different persons, myself and the members of my group, was repaid. It was understood that that money should be repaid out of the first money that was received. The money that was advanced by the members of the association was merely a loan to the association. It came back to us without interest.

Redirect Examination.

(By Mr. HALL.)

Q. In this division of December, 1907, were you to divide up the lands specifically and each group handle a portion of the lands as it might see fit, or were you to handle it as an entire group of lands?

A. We talked at one time that we might possibly drill a piece of land a piece, but not divide the land up. [419]

(Testimony of Frank R. Strong.)

Q. It was all to be held in common, was it?

A. That is what I understood.

Q. Did the members of this association or the British-American Oil Company ever drill for oil upon any of these 207 locations?

A. They never drilled. Part of this crowd did put up a derrick and got ready to drill at one time, but we never did drill.

Q. You never had drilled on any of it? A. No.

Recross-examination.

(By Mr. WEIL.)

Of these 207 locations, three quarter sections were finally really owned by the British-American Oil Company as being oil land. The British-American Oil Company was instrumental through making leases, in drilling these three quarter sections. We put up a derrick on one. These three quarter sections have been drilled for the British-American Oil Company, and oil discovered on them. These three quarter-sections are all the lands that the British-American Oil Company now claims.

Redirect Examination.

(By Mr. HALL.)

At one time we did claim other lands, and those lands have since proved to be oil lands. We located some other lands that afterwards proved to be oil lands. But we lost them through litigation and by jumping. We only had one lawsuit. At this time we claimed all of Section 30, which was developed by the Pioneer Midway Oil Company. And we only

(Testimony of Frank R. Strong.)

claim three quarters [420] of this section 15. We claimed one quarter in Section 4. I don't know whether that turned out to be oil land or not.

Testimony of A. W. Casey, for Plaintiff.

A. W. CASEY, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is A. W. Casey. I reside in Glendora, California. I am a lemon rancher. I resided near Los Angeles in 1907, 1908 and 1909. At that time I didn't have any steady, regular employment. At one time, for a very short time, I was employed by Dr. McDonald, but that employment did not last. I was not busy, and he asked me if I had anything to do, and I told him no, and I went into his offices; it lasted about a month, a little over a month. I can't tell you the month; it was in 1907. I suppose I am the same A. W. Casey whose name appears upon 36 notices of location of placer mining claims recorded in Kern County, California. I had forgotten that I was a locator until recently so informed. I don't recall that I actually signed the location notices myself. In order to give you the circumstances under which my name came to appear upon those location notices I would have to explain a little my connection with the office. This employment that I speak of was for a very short time, and later I took offices with Dr. McDonald and had a desk there for some months; and during that time there were certain

(Testimony of A. W. Casey.)

location notices came into the office, and later in the year, as I recall, it was desired to re-locate in order to save the expiration. I don't know who owned them, but Dr. McDonald had charge of them in the first instance. [421] I could not recall the description of the lands that were covered by these locations without seeing some of the documents. I went over all of them and checked them off at that time, to aid in identifying them.

Q. When you say they came into the office, will you please explain to the Court what you mean by that?

A. I think they were brought to Dr. McDonald by a party or parties who were either unable to produce sufficient money to carry them on—as I remember it they were unpatented—or to provide funds for development. Whatever it was, it was the ordinary course of taking locations and developing them, and they were brought to Dr. McDonald to finance in some way.

Dr. McDonald had been in the real estate business and was taking up oil. That was how I came to be connected with him; he wanted some assistance in the matter. I suppose he was what you would call a promoter in that line of work, although that word was not used.

Q. Well, did those locations, or the lands embraced in those locations,—afterwards were they included in these locations which you appeared upon as a locator?

A. I suppose so. As I said, I do not recall my

(Testimony of A. W. Casey.)

being a locator, but if the record has it so, I take it that I was.

Q. Did you have any conversation with Dr. McDonald in regard to making any of these locations?

A. I don't think I understand the question. They were already made when I saw them. I don't recall in whose name they were at this time, and then it was desired to relocate them or locate them over again, and of course there was considerable talk about them in the office. [422]

Q. Who was doing that talking about relocating them or locating them over again?

A. I would say Dr. McDonald, and there were others in the office, coming in from time to time.

Q. Do you remember any of the other persons who came in to talk about these matters?

A. I had forgotten all of the names, but lately several names were brought to mind, and some of them I cannot repeat now. There was, I think, a Mr. Elliott; there was a Mr. Cole associated with Mr. McDonald in the first instance, but he dropped out of the matter.

Q. Did you know Mr. A. H. Butler, Sr.?

A. I think it was Mr. Butler who originally had the locations.

I do not recall Mr. Thaddeus. I did not know Senator Stephen W. Dorsey in connection with them. I don't recall Mr. Strong. I might have seen him or known him, but I don't recall Mr. Strong. I don't recall Mr. George W. Dickinson. I don't recall Mr. Lewis W. Andrews in connection with these

(Testimony of A. W. Casey.)

locations. I might have been asked by Dr. McDonald or someone to assist in the relocation of these lands, but I don't recall how I came to be connected with them, except as a general matter of good will to assist in the relocation. I did not have any personal interest in these 36 locations which appear of record in Kern County. I do not now recall that I intended to claim any interest in the lands covered by these locations, except as I was associated with Dr. McDonald in the way I have described. I was not a partner in any way. I had no interest in those lands at that time and did not claim any interest in them. I have never claimed any interest in any of those lands.

Q. Well, can you tell me what was in your mind when you signed [423] those location notices, if you did sign them, or what was in your mind if you permitted the use of your name in the making of those locations?

A. It would be pretty difficult to recall what was in my mind 11 years ago. I can only say it was probably because of my acquaintance and association with Dr. McDonald in the way I have described, and as a friendly association and assistance. If it was called for, I suppose I would—I know I would.

Q. Do you now recall that you had any intention at that time to locate on any of these lands and to claim any interest in them after they were located?

A. No, sir.

I don't recall a deed from myself and 21 other persons conveying to Frank R. Strong and M. Z.

(Testimony of A. W. Casey.)

Elliott as trustees these 207 claims. I might have made it, but I don't recall anything about it. I do not remember of having received any compensation or anything of value for making that deed. I do not recall that I had any talk with Strong or Elliott about the making of that deed. I am satisfied that Strong and Elliott did not make any declaration of the trusteeship which is supposedly described and created. I did not know anything about the deed from Elliott and Strong to the British-American Oil Company in May, 1909. I was not consulted in any way by any of the parties in regard to it.

N. G. Casey is my wife. I do not remember that Mrs. Casey's name appears upon any of those location notices, except that her name has been mentioned just now. I have no recollection that her name was used, but she might have consented to the use of her name, or it might have been used because other names were required, but I don't recall, and did not recall until just now—I don't recall it now; I don't know it as a fact. I have transacted Mrs. [424] Casey's business generally and have been thoroughly familiar with her business transactions. I have been familiar with what her interests are in different things. I have never known of Mrs. Casey, for herself or through me as her agent, making any claim to any of the lands covered by these locations on which her name appeared. I know she has not received anything of value by reason of the fact that her name was used upon these locations. Neither

(Testimony of A. W. Casey.)

Mrs. Casey nor myself now claim any interest in any of those lands.

Q. When this matter was brought up in the office of Dr. McDonald, did you ever hear of any association that was to be formed to handle these lands?

A. Well, as to that, I would have to make a little explanation, if it is proper. As I told you, there was a Mr. Cole, as I remember the name—

Mr. WEILL.—I prefer to have the witness answer the question. Read the question to the witness.

Mr. HALL.—Read the question, and listen to the question and give us an answer; and if you desire to explain, I will ask permission of the Court that you may later.

(Question read.)

Mr. HALL.—Now, you may answer that, if you can, yes or no, Mr. Casey.

A. Well, I would say qualifiedly no.

I can't say I did not hear anything about what was to be done with the lands at this time. There might have been conversations as to what was to be done with the lands. I do not recall anything that I heard.

Q. Did you hear of any company or association or syndicate being named in connection with these lands? [425]

A. It is difficult to answer that question. There were people coming from time to time to Dr. McDonald's office in consultation about these lands. Some of them I met. I had some knowledge of Dr. McDonald's business. There were some things I

(Testimony of A. W. Casey.)

had no knowledge of. Subject to that, I can say I had no knowledge of an association.

I do not recall Senator Jones in connection with these lands. Neither Mrs. Casey nor myself have ever been stockholders of the British-American Oil Company or the North Midway Oil Company. There was a company, the name I am not familiar with, in which a number of people were named as directors or as incorporators, and I cannot tell you the name of that company. I was not a director of the British-American Oil Company. I suppose I was one of the incorporators of the Dabney Oil Company. I can't recall just the connection at the present time. I attended a meeting afterwards.

Cross-examination.

(By Mr. WEIL.)

I do not recall that Dr. McDonald operated rather extensively in oil in Ventura County as well as in the Midway. Some of these things are very clear in my mind. I remember clearly I had no financial interest in these locations, and that when I became a locator I was doing it in someone else's behalf. I don't recall anyone in whose behalf I was doing it, except Dr. McDonald and some of the people that I saw come to the office. I knew he had some associates. I recall a Mr. Elliott and Mr. Butler. The names, of course, are difficult to recall, but there were several gentlemen came in and were in consultation from time to time about these oil lands. I would not know how to define the relation in which

(Testimony of A. W. Casey.)

I was acting on behalf of Dr. McDonald and these other [426] gentlemen in this matter.

Q. Well, of course, I take it you were not intending to perpetrate any fraud on the Government of the United States.

A. Not in the least.

Q. No. A. No, I would have resented that.

Q. And therefore you must have realized you were acting as a representative or as an agent, and not with the idea of helping anybody defraud the Government. A. Not at all.

Q. That was not your purpose? A. No, sir.

Q. You are quite sure you had no such intent in your mind. A. Why, certainly.

Q. And therefore you must have been acting as the agent or representative of someone in doing these locations, as you do not claim any interest in them yourself, do you?

A. I have a difficulty in saying that I acted as a representative or agent for anyone. There seems to me to be an inference. I do not recall just what the results would have been so far as Dr. McDonald was concerned. I suppose if he had succeeded in a large degree, there might have been some result to me.

There was no agreement at that time for any interest to come to me.

Testimony of Roy Jones, for Plaintiff (Recalled).

ROY JONES recalled.

Direct Examination.

(By Mr. HALL.)

The incorporators of the North Midway Oil Company were George C. Haldeman, Frank R. Strong, M. Z. Elliott, L. W. Andrews and Roy Jones. It was incorporated November 8, 1909. The stockholders [427] were as follows: May 15, 1911, I find a certificate No. 1, issued to the estate of M. Z. Elliott for 1000 shares; and No. 2, on May 15th—I can't make out whether that is 1,500 or 1,000; it is blotted. The stockholders were M. Z. Elliott, W. Z. McDonald, John P. Jones, Frank R. Strong, Lewis W. Andrews, George W. Dickinson, Roy Jones. That is all in the original issue. They continued to be stockholders for a number of years. I do not find any changes in the stock ownership until 1914. That is when some of the stock was issued to the Ramena corporation; that is my [428] father's estate corporation. The stock held by my father in the North Midway Oil Company was held in his name until the time of his death. The Ramena was the holding corporation for his estate, and it was transferred to that. That was true of my father's stock in the British-American Oil Company. The 3990 shares of stock in the British-American Oil Company were held in my father's name until the incorporation of the Ramena. Ten shares of stock stood in my name, simply for the purpose of qualifying me as a director. The balance of the stock, the 3,990 shares, re-

(Testimony of Roy Jones.)

mained in my father's name up until the incorporation of this company which was incorporated to take over the estate of my father and manage it.

I think Senator Dorsey died some time in 1916. Senator Dorsey was not a stockholder in the North Midway Oil Company, but he was in the British-American Oil Company. Lewis W. Andrews became a stockholder in the British-American Oil Company on March 12, 1910. The date of this certificate is March 12, 1910. It was issued for 1,064 shares. The stock book shows that he still owns them. Neither A. W. Casey, nor N. G. Casey, nor W. P. Casey were ever stockholders in the British-American Oil Company. Wallace D. Dickinson was never a stockholder in that company. George W. Dickinson became a stockholder in the British-American Oil Company on March 12, 1910, when a certificate for 1064 shares was issued to him. Those shares of stock still stand in the name of George W. Dickinson. Stephen W. Dorsey became a stockholder on March 12, 1910. A few days thereafter I believe on March 18, 1910, 192 shares of Senator Dorsey's stock were issued to F. J. Haldeman. The next change in Senator Dorsey's stock was March 20, 1914; all of his remaining shares were cancelled at that time. I think my father bought his stock before that time, but it was not cancelled [429] until then. He simply endorsed his stock to us. It was some time before we had it reissued. I think the certificate will show when my father bought it. I was quite sure that it was earlier than that that we

(Testimony of Roy Jones.)

bought it, because it was bought in my father's lifetime, I know. It was not transferred until after my father's death, and I see it was transferred here from the estate. It was endorsed in blank to us originally, and we held it some time, and then they filled in the estate; it was issued to the Ramena corporation when it was finally issued. Senator Dorsey transferred all of his stock to my father at that time. I think he had 3,000 shares at that time. That was after the reduction of the capital stock.

Q. L. B. Dorsey, was she ever a stockholder in the British-American Oil Company?

A. I always understood that she was a joint owner with Dorsey of this stock that was issued in his name.

Q. Well, do you find anything in your records to indicate that Mrs. L. B. Dorsey was the owner of any shares of stock in the British-American Oil Company?

A. Only from what Senator Dorsey told me from time to time; nothing in the record.

M. Z. Elliott was a stockholder in the British-American Oil Company. He became a stockholder on March 10, 1910, and he had 3,192 shares. On March 12 they had a reissue of stock. It was cut up and split into different certificates. I think it was reissued to him again, but he had it split up differently. Yes, he had a 1,000 certificate, and one certificate for 192, turned in, 1,192 turned in, and had two certificates issued for 596 each. In March, 1911, he turned in 1,596 shares, and I will tell you in a [430] moment to whom they were reissued. One thousand

(Testimony of Roy Jones.)

five hundred shares were issued March 4, 1911, to Mrs. Jennie M. Davis; that was the wife of W. J. Davis, his partner. And 46 shares were issued to Jennie M. Davis. Mr. Elliott continued to hold the remainder of his stock until his death. He died four or five years ago. Mrs. Davis does not own the 1,146 shares that were issued to her. I think Mr. Walton bought that stock. Miss O. C. Gebauer has never been a stockholder in the British-American Oil Company. Neither has G. A. Horn. George C. Haldeman was never a stockholder in the British-American Oil Co. The stock stood in Mrs. Haldeman's name. Neither Addison C. Macon, Henry L. Musser, Warren F. McGrath, H. R. McDonald, J. E. McDonald, nor Albert G. Shaw ever owned any stock in the British-American Oil Company. Frank R. Strong was a stockholder. The original issue to him was made on March 12, 1910, 1,064 shares. Mr. Strong still owns it.

Cross-examination.

(By Mr. WEIL.)

I testified when I was on the stand before that I owned a half interest in what belonged to my father's group. He owned half and I owned half. In the summer of 1908 I was taken quite ill and went to San Francisco to a specialist, and was sent to Europe. I had to quit work, and had a pretty expensive trip, and got to owing considerable money to my father and other people. And along in the fall of 1909, when they began very active talk about putting up a large amount of money to develop this thing, that

(Testimony of Roy Jones.)

they were going to put up a good many thousand dollars apiece, I thought it the part of wisdom to sell out my interest, and I did sell it out to my father. I cannot tell you exactly what I got for it. I tried to look up my memorandum, and I cannot find it, because my [431] father and I did business rather informally one with the other. But I owed him quite a good deal of money, amounting at that time to—oh, between two and three thousand dollars, I have forgotten just how much it was. I remember also there was a small automobile, one of the old-fashioned Hup automobiles involved in the thing. Anyhow we had a general square-up of that, and squared up accounts, and I squared up my accounts, and turned that British-American over to him. That was before the stock was issued, along about 1909, before the organization of the Midway. That was why I did not go personally into the Midway, because I did not have the money to put in it. From that time until my father's death I was acting really in my father's behalf. I stayed there simply to take care of him. I had no further interest in the corporation,—never had until I inherited from him.

The North Midway Oil Company was incorporated because we were not getting rapid enough action to suit most of us on the thing, especially my father and Mr. Strong and his group, and some of those people who had money and wanted to go ahead and push the thing faster than it was being pushed; and we could not get very rapid action for the reason that Dorsey was away a great deal of the time,

(Testimony of Roy Jones.)

and Mr. Butler was in Europe a great deal of the time. So that we decided that those of us who had the money and the inclination would go ahead and drill, and that we would issue from the British-American a lease, leaving all those in interest—we did not want to cut out those in the British-American, even if they did not put up; we would leave them with a margin between the royalty we paid and the royalty—that is, we would leave a margin in favor of them, that is, we would pay a royalty sufficient so that there would be something in it for [432] the British-American; that is my point. So that we leased originally to Mr. Dickinson, and then afterwards formed the Midway for all of those who wanted to come in of the original British-American stockholders. We held the thing open quite a long while, to see who would come in and who would not. Well, it was arranged in the summer of 1909, about the time that we were urged to get active. Mr. Elliott especially was coming to every meeting and begging us to go to work and drill, and most of us wanted to drill, but we were hanging back because Dorsey and Butler were not available, were not there. The purpose of this new arrangement was to permit the people who were ready and able and willing to put up the money to go ahead and drill. The British-American gave a lease to Dickinson.

Q. Now, by referring to the minute-book of the British-American, you will notice that lease to Dickinson was authorized at a meeting held on September 27, 1909. Had that plan been arranged for prior to

(Testimony of Roy Jones.)

the actual authorization of the lease?

A. We had been talking it over for some time.

Q. Had you taken any actual steps to consummate the business before that time?

A. To consummate what business?

Q. Going ahead with this project.

A. Oh, yes; we had already gone to work and taken active steps. We had authorized Elliott to go ahead and prepare to drill, and get the stuff to drill with, and all that sort of thing.

Q. About when was that?

A. That was either the latter part of August or early in September, I think.

Q. If I may be permitted to refresh the witness' memory by [433] some proof we will subsequently put in, we will show certain lumber was purchased and put upon the land around the 17th of September, 1909, by the King Lumber Company. Was this arrangement of yours or the North Midway, rather, to develop this land, arranged for prior to that date? A. Yes.

Q. And was the ordering of this lumber a part of that project? A. It was.

This drilling plan was left open. Several agreed to come in, and there were others who tentatively might come in, and we fiddled around a long time, waiting to see who would come in and who would not. But we knew my father would come in. I think he agreed to put in \$5,000, and then if they needed more he would come through again, but that was the original proposition, but he was to stay with it, whatever

(Testimony of Roy Jones.)

they did, to stay with it. I think Strong, Dickinson and Andrews all agreed to put up \$5,000 each,—not for their group interests, but each to come in for five thousand, if I am not mistaken. Elliott, and I think McDonald were to come. This lease to Dickinson that was authorized on the 27th of September, 1909, was authorized in pursuance of this plan that we had previously worked out to develop this property with a subsidiary corporation. We were going ahead and incurring expense, and we wanted to have something definitely understood so that we would know where we were. This lease was not for Dickinson's individual benefit. He simply held it. I can explain about the 50 shares of stock that you say were issued to a man named Frank H. Hudson. I had forgotten that. It is a fact that 50 shares were issued to Frank Hudson. I think he was promised that for some work he did by M. Z. Elliott, and [434] M. Z. Elliott asked us to come through and make good what he had promised, if I remember the thing correctly, and we did. The stock was divided after the deduction of these 50 shares.

Q. And another matter I don't understand, and perhaps you can explain, is this offer that was made by Strong and Elliott, the trustees, to the British-American Oil Company at the meeting of February 3d. I take it that this offer was all just framed up there at the time of the meeting, was it, so as to put the thing into legal shape?

A. I think they brought in a tentative sketch of an agreement.

(Testimony of Roy Jones.)

Q. Now, I see some reference to 640 acres of land that was to go to some five individuals, to the directors. What were the circumstances under which that occurred?

A. Well, we talked that proposition over when they were talking about what they would do with the land. They were then talking, you know, about the corporation acquiring the land, and there had been a certain amount of dissatisfaction in the division, because they thought Butler should have gone in on level terms with the rest of us.

Q. Butler having gotten a fifth?

A. Butler having gotten a fifth, while the rest of us only got a fifth of four-fifths. And it was suggested Butler might be made to come through to the extent of equalizing the thing up more or less. That was part of the reason, and another reason was—

Q. One moment, before you give the other reason. Then I understand this 640 acre proposition here that was referred to was for the purpose of equalizing the interest.

A. That was the original idea.

Q. Would that approximately equalize the interest?

A. Very close to it, yes. It was not figured out very accurately. [435]

Q. Was this plan ever carried into effect?

A. No.

Q. This was a proposition that was put up and passed, and dropped, was it?

(Testimony of Roy Jones.)

A. Yes, it could not have been carried into effect without Butler's O. K. Butler was away at the time, and I believe Butler strenuously objected when he came back.

Q. Butler never O. K.'d it? A. No.

Testimony of Roy Jones, for Defendants.

ROY JONES, a witness called on behalf of defendants, having heretofore been duly sworn, testified as follows:

Direct Examination.

(By Mr. WEIL.)

This lease was made to Dickinson in pursuance of a plan that had already been arranged and was being carried into effect. This meeting of September 27, 1909, which authorized the lease to Dickinson, was merely carrying out formally what had already been done in practice; we had gone ahead and waited for these different people to signify what they were going to do, and we had gotten so far by that time we thought it was time we got a little something on paper. I don't think the money was put up for the purpose of drilling this well. We just all said we stood ready to put it up. It must have been subscribed—let me see—it must have been \$25,000, I guess. I never figured it out, but I think it was that much, about that. My father was to put up, I think, \$5,000 of it, and as much more as he would be called on, *pro rata*; and Strong, Dickinson and Andrews were each to put up \$5,000, and I think McDonald and Elliott were going to put up—I think McDonald

(Testimony of Roy Jones.)

[436] first of all said he would agree to put up \$2,000, if I ain't mistaken, and said he might come through with some more. And that is one reason why we waited around, to see what the proportionate interests would be, to see how they would come in and what they would do.

Q. Now, the interests—the amount of contributions, I notice from what you say there, is considerably different from the interests that these parties originally had in the British-American, isn't it?

A. That is the reason we formed the new company.

Q. You formed the new company because some of the parties who had the smaller interests in the British-American were willing to put up a larger share than others?

A. The people with the smaller interests in the British-American were the people who had the money.

Q. And they were to share in this new corporation which you contemplated, and which was afterwards effectuated, through the North Midway,—they were to get stock in accordance with their money contributions, were they? A. Yes.

Elliott was the man appointed to carry this plan into effect. He was the man I think we authorized to act on behalf of this little group that was to get this lease. He was then president of the British-American Oil Company, and it was on his recommendation, as president, that we went ahead, and if I am not mistaken, he was the one that originally recommended that we get together a subsidiary company

(Testimony of Roy Jones.)

that would do something and do it quick and fast. In pursuance of that authorization he went up to the field and started operations up there, sometime in September. The first thing that was done was to order some lumber from the King Lumber [437] Company. This lease affected the northwest quarter of the land that is in suit here.

The North Midway did not afterwards drill a well on the land. While they were waiting for the rig lumber, which we were not able to get at first, a corporation came along and began dealing with one of our men in the field for a lease on the thing; and finally they agreed to go ahead and drill very diligently and do a lot of work on the thing, and we talked it all over and concluded if they wanted to go ahead, so much the better, and we would go ahead on something else, if they wanted particularly that piece of land, because we had other pieces. That company was the predecessor of the Dominion Oil Company; I think at that time it was Maxwell McDonnell's and those fellows. They went ahead and drilled the well. They took over our stuff. They repaid us for the outlays that we had made prior to that time, after I fought with them for about a year and a half, but that was part of the original agreement.

Cross-examination.

(By Mr. HALL.)

The North Midway Oil Company never did any actual drilling on this northwest quarter of 15, the furthest they ever got was to have a derrick par-

(Testimony of Roy Jones.)

tially built. They could not get the stuff to complete it, and in the meantime along came these other people and took the thing off their hands.

Q. Do you know personally what had been done on the ground? Did you go there yourself to see?

A. I don't think I ever went there at that time. As secretary I got constant reports.

The North Midway Oil Company was not incorporated until [438] October 27, 1909. The British-American Oil Company made this lease to Dickinson on September 27, 1909.

Q. And Dickinson never did anything under that lease more than to simply assign it to the North Midway Company, did he?

A. Dickinson simply took that over for the purpose of going ahead and prosecuting the work we already had under way, and to make somebody or other responsible for the money, the expense we were incurring, you see.

Dickinson himself did not do anything on the land. We did not have any money raised at that time, actually subscribed. We didn't put the money up because there wasn't anything to put it up for. There were some small amounts actually put up, just for operating expenses. I have forgotten just what they were. There was never any substantial sum put up by the stockholders of the North Midway Oil Company. There was never any actual cash called for. They got out from under and subleased to Joe McDonnel. That was afterwards split into a lease to the Maxwell crowd, which became the Dominion

(Testimony of Roy Jones.)

Oil Company. And the north half of the 80 acres went to what eventually became the Bankline. And the north 80 acres eventually went to Captain John Barneson and Mr. Walker. That passed through a number of hands and was leased and turned back, and had a long history. It was in the hands of M. Z. Elliott and the Elliott Oil Company at one time. It was in the hands of Frank J. Carman at one time, and different people.

Q. The North Midway Oil Company then never had anything to do with the actual development of oil on this northwest quarter?

A. Except they promoted it very vigorously.

Q. Beyond being a lessee, lessor and promoter.

A. Yes. [439]

Q. And that is also true as to the British-American Oil Company; it never did anything actually as a corporation toward development?

A. Well, it could not after it leased it.

Mr. HALL.—I desire to offer and read in evidence the minutes of the meeting of the board of directors of the British-American Oil Company on January 6, 1910, at pages 28 and 29 of the record produced by the plaintiff, as follows, to wit:

“Jan. 6—1910.

“Jan. 6—1910.

“Called meeting of the Board of Directors of the British-American Oil Company at the office of Strong and Dickinson, January 6, 1910, at 4:00 P. M.

“Present:—M. Z. Elliott in the chair, S. W. Dorsey, W. Z. McDonald, Frank Strong and Roy Jones.

“Upon motion of Mr. McDonald, seconded by Mr.

Roy Jones and duly carried, the reading of the minutes of the preceding meetings was postponed.

“It was moved by Mr. McDonald, seconded by Senator Dorsey that the firm of Toland & Rogers be retained as counsel for this Company in the Cunningham lawsuit, and that Mr. Thos. Scott be retained as local counsel at Bakersfield. The motion was carried by the following vote:

“Ayes:—M. Z. Elliott, S. W. Dorsey, W. Z. McDonald, Frank Strong and Roy Jones.

“Noes:—None.

“It was moved by Senator Dorsey and seconded by Mr. McDonald that the Executive Committee be instructed to confer with the attorneys and take all necessary steps to prepare and record proofs of labor, and to make applications for patents on the property of this Company. The motion was carried by the following vote:—

“Ayes:—M. Z. Elliott, S. W. Dorsey, W. Z. McDonald, Frank Strong and Roy Jones.

“Noes:—None.

“It was moved by Mr. McDonald, seconded by Senator Dorsey that Mr. Andrews be requested to prepare necessary papers to reduce the capitalization of this Company from \$1,250,000.00 par value to \$100,000.00 par value, and that all necessary proceedings to that end be taken. The motion was carried by the following vote:

“Ayes:—M. Z. Elliott, S. W. Dorsey, W. Z. McDonald, Frank Strong and Roy Jones.

“Noes:—None.

“It was moved by Senator Dorsey and seconded by Mr. Roy Jones, that the President and Secretary be authorized to borrow not to exceed \$1000.00, and to execute and give the notes of the Company therefor. The motion was carried by the following vote:—
[440]

“Ayes:—M. Z. Elliott, S. W. Dorsey, W. Z. McDonald, Frank Strong and Roy Jones.

“Noes:—None.

“It was moved by Senator Dorsey and seconded by W. Z. McDonald that the President and Secretary be authorized to execute and deliver on behalf of this Company quitclaim deeds for such lands in Coalinga, held under locations by this company, as were not protected by it in 1909 to such stockholders of the Company as did protect it; and quitclaim deeds to its land in the Devil’s Den and Templor Districts to stockholders of this Company and their associates.

“On roll call the motion was carried by the following vote:

“Ayes:—M. Z. Elliott, S. W. Dorsey, W. Z. McDonald, Frank Strong and Roy Jones.

“Noes:—None.

“The meeting then adjourned until Saturday morning, January 8th, at 9:00 A. M. at the office of Strong & Dickinson, Corner 2nd & Broadway.

“M. Z. ELLIOTT,

“President.

“FRANK R. STRONG,

“Secretary.”

Mr. HALL.—I offer and read in evidence the minutes of the meeting of the board of directors of the British-American Oil Company on January 8, 1910, at pages 30 and 31 of the minute-book produced by the witness, as follows, to wit:

“Jan. 8—1910.

“Adjourned meeting of the Board of Directors of the British-American Oil Company at the office of Strong & Dickinson, Corner Second and Broadway.

“Present:—M. Z. Elliott in the chair, W. Z. McDonald, S. W. Dorsey, Roy Jones and F. R. Strong.

“Absent:—None.

“The reading of the minutes of the preceding meeting was postponed.

“It was moved by S. W. Dorsey, seconded by W. Z. McDonald that the capital stock of the Company be reduced to \$100,000. The motion was carried by the following vote:

“Ayes:—M. Z. Elliott, W. Z. McDonald, S. W. Dorsey, Roy Jones and F. R. Strong.

“Noes:—None.

“It was moved by W. Z. McDonald, seconded by Roy Jones, that the President and Secretary be authorized and instructed to execute and deliver notes of the corporation to the following persons in amounts as follows:—

“F. R. Strong	\$135.00
S. W. Dorsey.....	135.00
W. Z. McDonald.....	135.00
J. P. Jones.....	135.00

M. Z. Elliott..... 135.00

A. H. Butler & Co..... 65.00

[441] said notes to cover like amounts loaned by the said named persons to the British-American Oil Company. The motion was carried by the following vote:

“Ayes:—M. Z. Elliott, W. Z. McDonald, S. W. Dorsey, Roy Jones and F. R. Strong.

“Noes:—None.

“It was moved by S. W. Dorsey, seconded by W. Z. McDonald that the sums due the several persons named in a resolution adopted by the Board of Directors on February 3, 1908, shall be paid to Frank R. Strong, John P. Jones and Stephen W. Dorsey out of the first monies received by this company for royalties ~~off-of~~” (correction in ink “or from—O. K. R. J.”) “the sale of property, or from any other income that may accrue. The motion was carried by the following vote:

“Ayes:—M. Z. Elliott, W. Z. McDonald, S. W. Dorsey, Roy Jones and Frank R. Strong.

“Noes:—None.

“The President presented a letter from S. W. Dorsey, notifying this company that he contests the claim of A. H. Butler for the commission for the leasing of the South one-half of Section 15, Township 31 South, Range 22 East, M. D. B. & M., on the ground that he, himself, is entitled to the said commission. It was moved by Roy Jones and seconded by F. R. Strong that the letter be received and filed,

and its contents noted on these minutes. The motion was carried by the following vote:

“Ayes:—M. Z. Elliott, W. Z. McDonald, S. W. Dorsey, Roy Jones and F. R. Strong.

“Noes:—None.

“It was moved by W. Z. McDonald, seconded by F. R. Strong, that the President and Secretary be, and they are hereby authorized and instructed to execute and deliver a quitclaim deed to the Combination Oil Company for all of Section 35, Township 27 South, Range 18 East, M. D. B. & M., for the consideration of \$1,000.00 paid by A. H. Butler, the receipt of which is acknowledged. The motion was carried by the following vote:—

“Ayes:—M. Z. Elliott, W. Z. McDonald, S. W. Dorsey, Roy Jones and F. R. Strong.

“Noes:—None.

“The meeting then adjourned subject to the call of the chair.

“M. Z. ELLIOTT,

“President.

“FRANK R. STRONG ~~ROY JONES~~

“Secretary.”

Mr. HALL.—I also offer and read in evidence the minutes of the meeting of the board of directors of the British-American Oil Company on March 12, 1910, at pages 32, 33 and 34 of the record as follows, to wit: [442]

“Mar. 12, 1910.

“Meeting of the Board of Directors of the British-American Oil Company held pursuant to the call of the chair, March 12, 1910.

“Present:—M. Z. Elliott in the chair, F. R. Strong, W. Z. McDonald, S. W. Dorsey and Roy Jones.

“Absent:—None.

“The reading of the minutes of the preceding meeting was postponed.

“Director Roy Jones, seconded by Director W. Z. McDonald, moved the adoption of the following resolution:

“RESOLVED, that William O. Maxwell be, and he is hereby appointed, as the agent of this corporation to take all necessary steps for the purpose of applying in the name of this corporation. (British-American Oil Company) for United States patent on the Zee No. 8, Zee No. 9 and Zee No. 10, placer mining claims, and that the President and Secretary of this corporation be, and they are hereby authorized and directed to execute, on behalf of this corporation and under its seal, a written power of attorney, to said William O. Maxwell, substantially in the words and figures following, to wit:

“POWER OF ATTORNEY.

“KNOW ALL MEN BY THESE PRESENTS:— That BRITISH AMERICAN OIL COMPANY, a corporation, organized and existing under the laws of the State of California, having its principal place of business at the City of Los Angeles, California, does hereby constitute, and appoint William O. Max-

well, of McKittrick, Kern County, California, (the same being within the Visalia, California, United States Land District), the attorney in fact of said corporation, for said corporation, and in its name to make applications for patent of the United States in the proper Land Office upon the following placer mining claims situate in Kern County, California, and named and described as follows, to-wit:—(1) The Zee No. 8 placer mining claim comprising the Northwest quarter of Section 15, Township 31 South, of Range 22 East, Mount Diablo Base and Meridian; (2) The Zee No. 9 placer mining claim, comprising the Southeast quarter of said Section 15, in said T. 31 S., R. 22 E., M. D. B. & M.; and (3) The Zee No. 10 placer mining claim, comprising the Southwest quarter of said section 15, in said T. 31 S., R. 22 E., M. D. B. & M.; and to make or cause to be made any and all surveys, re-locations, amended locations, affidavits, and all necessary papers, which may be required or be proper or convenient in the transaction of such applications or to perfect or protect the same or the title to each, any and all of said claims; also in case of any and all contests, protests, adverse claims to take all measures necessary and proper to defend against such adverse claims, contests, protests, and against any and all suits, either in the Land Office, or in any judicial proceeding, and in all such proceedings and matters to execute any and all bonds, or other papers and to verify any and all proceedings, papers and matters to and including appeal or Writ of Error; and to [443] take any

and all other steps that may be necessary or proper to be taken to procure from the Government of the United States patent to said lands and premises, granting the same to said corporation; and to do all acts and things in and about the said premises which it, the said corporation, if present, could do, till patent is finally issued and delivered.

“IN WITNESS WHEREOF said corporation has in pursuance of a resolution of its Board of Directors, duly and regularly passed and adopted, caused these presents to be executed by its President and Secretary in its name, under its corporate seal, and as its corporate act and deed, all this 12th day of March, A. D. 1910.

“BRITISH AMERICAN OIL COMPANY.

“By M. Z. ELLIOTT,

“Its President.

[Corporate Seal]

“By ROY JONES,

“Its Secretary.”

“It was moved by W. Z. McDonald, seconded by Roy Jones, that Mr. Strong be appointed a committee of one to take up with Mr. Drake the matter of co-operating in securing a patent on land leased by this Company from him and his associates. The motion was carried by the following vote:—

“Ayes—M. Z. Elliott, F. R. Strong, W. Z. McDonald, S. W. Dorsey and Roy Jones.

“Noes:—None.

“Mr. Strong presented his written resignation as Secretary.

“It was moved by S. W. Dorsey and seconded by W. Z. McDonald that the resignation of Mr. Strong

be accepted. The motion was carried by the following vote:

“Ayes:—M. Z. Elliott, W. Z. McDonald, S. W. Dorsey and Roy Jones.

“Noes:—None. Mr. Strong not voting.

“It was moved by S. W. Dorsey, seconded by W. Z. McDonald that Roy Jones be elected Secretary vice F. R. Strong resigned. The motion was carried by the following vote:—

“Ayes:—M. Z. Elliott, W. Z. McDonald, S. W. Dorsey, and F. R. Strong.

“Noes:—None. Mr. Jones not voting.

“It was moved by W. Z. McDonald, seconded by F. R. Strong, that Messrs. Elliott, Jones and Strong be, and they hereby are appointed a committee with power to act to negotiate an agreement with S. W. Dorsey, and to appoint him attorney and agent to act for the Company in Europe. The motion was carried by the following vote:—

“Ayes:—M. Z. Elliott, W. Z. McDonald, F. R. Strong and Roy Jones.

“Noes:—None. Mr. Dorsey not voting.

“The meeting then adjourned subject to the call of the chair.

“M. Z. ELLIOTT,

“President.

“ROY JONES,

“Secretary.” [444]

Mr. HALL.—I now offer and read in evidence a certified copy of the proceedings of the British-American Oil Company as filed with the county clerk and *ex-officio* clerk of the Superior Court of Los

Angeles County, California, respecting the proceedings in regard to the reduction of the capital stock, which is as follows, to wit: [445]

Plaintiff's Exhibit No. 8.

CERTIFICATE OF DIMINUTION OF CAPITAL STOCK OF BRITISH-AMERICAN OIL COMPANY.

State of California,
County of Los Angeles,—ss.

We, M. Z. Elliott, President of British-American Oil Company, a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of California, and Frank R. Strong, Secretary of said Corporation, and we, the undersigned, M. Z. Elliott, Frank R. Strong, W. Z. McDonald and Roy Jones, being four of the five Directors of said British-American Oil Company, the said Corporation, do, and each of the undersigned does, hereby certify and declare as follows:

That said British-American Oil Company is, and during all of the dates and times hereinafter mentioned, was a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of California, and that its office and principal place of business is at the City of Los Angeles, County of Los Angeles, State of California, as more fully appears by the Articles of Incorporation of the said British-American Oil Company, duly filed in the office of the County Clerk of said Los Angeles County, California, on the 26th day of August, 1907.

That the amount of the Capital Stock of said Corporation authorized by its Articles of Incorporation is \$1,250,000, which is divided into 250,000 shares of the par value of five dollars each; that each and all of said 250,000 shares of the Capital Stock of said Corporation have been subscribed for; that the number of Directors of said Corporation, as provided by its Articles of Incorporation, is five, and that the undersigned, M. Z. Elliott, Frank R. Strong, W. Z. McDonald, and Roy Jones, are four of said five Directors and that Stephen W. Dorsey is the fifth of said Directors of said Corporation, and that said Directors were the Directors of said Corporation at all the dates and times herein mentioned; that said M. Z. Elliott is, and at all the dates and times herein mentioned was, the President of said Corporation, and that said Frank R. Strong, is and at all dates and times herein mentioned was, the Secretary of said Corporation.

That at all the dates and times on and after January 8th, 1910, said British-American Oil Company had no bonded indebtedness and no other indebtedness in excess of the amount of one thousand dollars; that a meeting of the Board of Directors of said British-American Oil Company was held [446] on Saturday, January 8th, 1910, at the principal place of business of said Corporation, at the building where the Board of Directors of said Company usually meets, to-wit, 147 South Broadway, ground floor, in the City of Los Angeles, Los Angeles County, State of California, which said meeting was duly called for the purpose of consideration and act-

ing upon and voting upon the proposition of diminishing the Capital Stock from 250,000 shares of the aggregate par value of \$1,250,000 to 20,000 shares of the aggregate par value of \$100,000, due notice of which meeting was given to each of the Directors of said corporation in all respects as required by law and the By-laws of said Corporation, and at which meeting all of the members of the Board of Directors of the said British-American Oil Company were present and voting, and,

We further hereby certify that at said meeting of the Board of Directors of said British-American Oil Company held as last aforesaid, a resolution was adopted, passed and concurred in by the unanimous vote of the Directors of said Company, (all of the Directors of said Company being present and voting in favor of said Resolution), diminishing the Capital Stock of said British-American Oil Company from \$1,250,000 divided into 250,000 shares of the par value of five dollars each, to \$100,000 divided into 20,000 shares of the par value of five dollars each.

We hereby further certify and declare that the Secretary of said British-American Oil Company, subsequent to said 8th day of January, 1910, and prior to the date hereof, did address, by mail, postage fully prepaid, a copy of said Resolution hereinbefore referred to, so adopted, passed and concurred in by the unanimous vote of the Board of Directors of said British-American Oil Company at said meeting of said Board held at the time and place aforesaid, so diminishing the Capital Stock of said corporation, as hereinbefore set forth, to each of the

stockholders of said corporation whose names appear upon the Company's books as sufficiently addressed or identified, at his place of residence, (the place of residence of each and all of said stockholders of said Company being known to said Secretary), and mailed said respective copies of said Resolution to said respective stockholders, being all of the stockholders of said corporation, with the proper postage thereon prepaid, and

We hereby further certify and declare that subsequent to the mailing of said copies of said Resolution to the stockholders of said Company, and prior to the date hereof, there has been filed with the Secretary of said British-American Oil Company a written approval and assent of the stockholders of said Corporation holding in the aggregate all of the subscribed Capital Stock and all of the issued Capital Stock of said Company, to wit, all of the Capital Stock of said Company, assenting to, approving, ratifying and confirming the diminution of the Capital Stock of said British-American Oil Company from \$1,250,000, divided into 250,000 shares of the par value of five dollars each, to \$100,000, divided into 20,000 shares of the par value of five dollars each, and ratifying and approving, assenting to and confirming said Resolution of the Board of Directors of said Corporation aforesaid, a true and correct copy of which said approval and assent is hereto attached, [447] marked "Exhibit A" and made a part hereof.

We hereby further certify that the persons who signed said written assent, of which "Exhibit A"

hereof is a copy, were and each of them was and is a subscriber for Capital Stock of said British-American Oil Company, and a stockholder of said British-American Oil Company, and that said stockholders have subscribed for and hold in their own names on the books of said company the number of shares set after their said names in said "Exhibit A" and in the aggregate they have subscribed for and hold all of the Capital Stock of said Corporation, to wit, 250,000 shares thereof, and that there are no stockholders other than those whose names are subscribed to said "Exhibit A." We further certify that no stockholders of said British-American Oil Company filed any written dissent with the Secretary of said Company.

We hereby further certify that said British-American Oil Company, the said corporation, and all and singular its Board of Directors and its President and Secretary, have duly and fully complied with each and all of the requirements of Subdivision Fifth of Section number 359 of the Civil Code of the State of California respecting, in connection with and for the purpose of diminishing the Capital Stock of said Corporation, as hereinabove set forth; and that said corporation and its officers have fully complied with all and singular provisions of Section 359 of the Civil Code of the State of California, and have taken all steps and proceedings required by law for and in connection with the diminution of the Capital Stock of said British-American Oil Company, as hereinabove set forth.

And we hereby further certify that the said Reso-

lution of the Board of Directors of said British-American Oil Company was adopted, as aforesaid, and was approved, ratified and confirmed by the written assent of the stockholders of said Corporation, as aforesaid, and by all and singular the proceedings hereinabove set forth, the capital stock of said British-American Oil Company has been diminished from \$1,250,000, divided into 250,000 shares of the par value of five dollars each, to \$100,000, divided into 20,000 shares of the par value of five dollars each all as hereinabove more particularly set forth.

IN WITNESS WHEREOF, we have hereunto set our hands and caused the corporate seal of said Corporation to be hereunto affixed, this 5th day of February, 1910.

M. Z. ELLIOTT,

President of British-American Oil Company.

FRANK R. STRONG,

Secretary of British-American Oil Company.

[Corporate Seal]

M. Z. ELLIOTT,

ROY JONES,

WM. Z. McDONALD,

FRANK R. STRONG,

Directors of British-American Oil Company. [448]

Subscribed, verified and sworn to before me, this 5th day of February, 1910, by M. Z. Elliott, President of British-American Oil Company, Frank R. Strong, Secretary of said Corporation, M. Z. Elliott, Frank R. Strong, W. Z. McDonald, and Roy Jones,

Directors of said British-American Oil Company.

OLIVE C. GEBAUER,

Notary Public in and for Los Angeles County, California.

The State of California,

County of Los Angeles,—ss.

M. Z. Elliott and Frank R. Strong each being first duly sworn deposes and says that said M. Z. Elliott is the President and said Frank R. Strong is the Secretary of British-American Oil Company; that he has read the foregoing certificate of diminution of the capital stock of said British-American Oil Company and knows the contents thereof; and that the same is true of his own knowledge.

M. Z. ELLIOTT.

FRANK R. STRONG.

Subscribed and sworn to before me this 5th day of February, 1910.

[Seal]

OLIVE C. GEBAUER,

Notary Public in and for the County of Los Angeles, State of California.

The State of California,

County of Los Angeles,—ss.

On this 5th day of February, 1910, before me, Olive C. Gebauer, a notary public in and for the said county of Los Angeles, duly commissioned and sworn, personally appeared M. Z. Elliott known to me to be the president of British-American Oil Company, the corporation described in the within and annexed instrument and known to me to be the person whose name is subscribed to said instrument as

President of said company and also personally appeared before me Frank R. Strong, known to me to be the Secretary of British-American Oil Company, the corporation described in the within annexed instrument, and known to me to be the person whose name is subscribed to said instrument as Secretary of said Company and acknowledged to me that they executed the within instrument as President and Secretary respectively of said company; and also personally appeared before me on the same day said [449] M. Z. Elliott and Frank R. Strong and also Roy Jones and W. Z. McDonald, each known to me to be a director of said British-American Oil Company, and the persons whose respective names are subscribed to such instrument as such directors of said corporation, and they severally acknowledged to me that they executed said instrument as Directors of said British-American Oil Company.

In Witness Whereof I have hereunto set my hand and affix my notarial seal at my office in said County of Los Angeles, State of California, the day and year in this certificate first above written.

[Seal]

OLIVE C. GEBAUER,

Notary Public in and for the County of Los Angeles,
State of California.

EXHIBIT "A."

We, the undersigned, owners and holders in the aggregate of 250,000 shares of the capital stock of the British American Oil Company, being the total subscribed and issued stock of said Company, hereby approve, assent to and authorize the reduction of the

capital stock of said corporation from 250,000 shares at the par value of \$1,250,000 to 20,000 shares of the par value of \$100,000.00.

We further assent to, ratify, confirm and approve a resolution of the Board of Directors of said British American Oil Company adopted by unanimous vote of said Board of Directors at a special meeting called for that purpose on Saturday, January 8, 1910, by which resolution it is resolved that the capital stock of said British-American Oil Company be reduced from 250,000 shares of the aggregate par value of \$1,250,000.00 to 20,000 shares of the aggregate par value of \$100,000.00, a copy of which said resolution is hereto attached, marked Exhibit "A" and made a part hereof.

IN WITNESS WHEREOF we have hereunto set our hands this 8th day of January, 1910.

Names of Stockholders of British-American Oil Company.	No. of Shares Owned by Each.
John P. Jones, by his Atty. in Fact Roy	
Jones	39990
Roy Jones	10
M. Z. Elliott	40000
Stephen W. Dorsey	40000
Frank R. Strong	13334
George W. Dickinson	13333
Wm. Z. McDonald	40000
L. W. Andrews	13333
A. H. Butler	50000

State of California,
County of Los Angeles,—ss.

On this 8th day of January in the year nine-

teen hundred [450] and ten before me Olive C. Gebauer, a Notary Public in and for said county of Los Angeles state of California residing therein, duly commissioned and sworn personally appeared M. Z. Elliott, Frank R. Strong, Stephen W. Dorsey, Wm. Z. McDonald, Roy Jones, George W. Dickinson, and Lewis W. Andrews known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] OLIVE C. GEBAUER,
Notary Public in and for said County of Los Angeles,
State of California.

State of California,
County of Los Angeles,—ss.

On this 8th day of January, A. D. 1910, before me Olive C. Gebauer, a Notary Public in and for the said county and State residing therein, duly commissioned and sworn, personally appeared Roy Jones known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of John P. Jones, and acknowledged to me that he subscribed the name of John P. Jones thereto as principal and his own name as attorney in fact.

In witness whereof I have hereunto set my hand and affixed my official seal on the day and year in this certificate first above written.

[Notarial Seal] OLIVE C. GEBAUER,
Notary Public in and for said County and State.

State of New York,
County of New York,—ss.

On this 14th day of January, A. D. 1910, before me Joseph J. Schmidt, a Notary Public in and for the said County and State residing therein duly commissioned and sworn, personally appeared A. H. Butler known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] JOSEPH J. SCHMIDT,
Notary Public, New York County. [451]

[Endorsed]: 8831. Filed Feb. 8, 1910. C. G. Keyes, Clerk. By W. C. Watson, Deputy.

State of California,
County of Los Angeles,—ss.

No. 8831.

I, H. J. Lelande, County Clerk and *ex-officio* Clerk of the Superior Court, do hereby certify the foregoing to be a full, true and correct copy of the original Certificate of Diminution of Capital Stock of British-American Oil Company, on file in my office, and that I have carefully compared the same with the original.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Superior Court this 23rd day of April, 1918.

H. J. LELANDE,
County Clerk.

By D. E. Higgins,
Deputy Clerk.

No. A.-58—Eq. U. S. vs. Dominion Oil Co., et al.,
Plffs. Exhibit No. 8. Filed April 24, 1918. Chas. N.
Williams, Clerk. [452]

Mr. HALL.—Mr. Weil, I have here a tabulation of these various locations, and I will show you how I have done it. This is the group (indicating), and the names (indicating), and these are the locations upon which they appear (indicating). There is the name of the location (indicating), the description of the land (indicating), the book and the page of the county records of Kern County (indicating.) Now, that goes through each group, and all groups, and gives the description of all of the claims, the names of the locators on each claim, and so forth.

Mr. L. W. ANDREWS.—You have checked that up as to the different locators?

Mr. HALL.—It has been checked over, and checked against the official records of Kern County. There may be some typographical errors in there that we haven't got, but we tried to have them carefully compared.

Mr. PRINGLE.—As I understand, your stipulation at the present time is simply that we waive the question of the competency of the evidence, reserving the—

Mr. HALL.—That is all—the right to its materiality, to save the Government buying 207 certified copies.

Mr. WEIL.—This may go in subject to the objection to its materiality.

The COURT.—Subject to its materiality and subject to any corrections.

Which said tabulation is as follows, to wit: [453]

“A list of the locators arranged in alphabetical order shows also the number of claims upon which each is located, as follows:

Name.	Number of Locations.
B. Adams	71
Lewis W. Andrews	17
A. W. Casey	36
N. G. Casey	15
W. P. Casey	15
Wallace D. Dickinson	17
Geo. W. Dickinson	201
Stephen W. Dorsey	108
L. B. Dorsey	93
M. Z. Elliott	7
O. C. Gebauer	17
G. A. Horn.....	63
George C. Haldeman	108
F. J. Haldeman	93
Addison C. Macon	41
Henry L. Musser	184
Warren F. McGrath	201
H. R. McDonald	80
J. E. McDonald	52
Albert G. Shaw	104
Frank R. Strong.....	17

“The various claims were located in groups. I have carefully gone over all of the 207 locations and have picked out the claims upon which each group was located, they are as follows:

George C. Haldeman	Wallace D. Dickinson
Warren F. McGrath	George W. Dickinson
O. C. Gebauer	Frank R. Strong
L. W. Andrews	Stephen W. Dorsey

“This group was located on the following claims:

Claim Name.	Description.	Record.	Page.
ZEE No. 1	SE. ¼ Sec. 32 T. 31 S.,	Book.	
	R. 23 E., M. D. M.	71	1
“ “ 2	NE. ¼ 32-31-23	do	2
“ “ 3	NW. ¼ 32-31-23	“	3
“ “ 4	SW. ¼ 32-31-23	“	4
“ “ 5	SE. ¼ 30-31-23	“	5
“ “ 6	NE. ¼ 30-31-23	“	6
“ “ 7	NW. ¼ 30-31-23	“	7
“ “ 8	NW. ¼ 15-31-22	“	8
“ “ 9	SE. ¼ 15-31-22	“	9
“ “ 10	SW. ¼ 15-31-22	“	10
“ “ 11	SE. ¼ 32-27-19	“	11
“ “ 12	NE. ¼ 32-27-19	“	12
“ “ 13	NW. ¼ 32-27-19	“	13
“ “ 14	SW. ¼ 32-27-19	“	14
“ “ 15	SE. ¼ 6-27-19	“	15
“ “ 16	NW. ¼ 7-27-19	“	16
“ “ 17	SE. ¼ 7-27-19	“	17

[454]

“This group was located on seventeen quarter sections.

“George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
Geo. W. Dickinson	
Stephen W. Dorsey	

Claim Name.	Description.	Record. Book.	Page.
ZEE No. 52	S. 1/2 NE. 1/4 Sec. 2-29-20	71	18
" " 73	S. 1/2 SE. 1/4 Sec. 10-29-20	do	39
" " 74	S. 1/2 NW. 1/4, NE. 1/4, NW. 1/4 10-29-30	"	40

"This group was located on three 120-acre tracts.

"George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
Geo. W. Dickinson	A. W. Casey
Stephen W. Dorsey	H. R. McDonald

"ZEE No. 53	SE. 1/4 Sec. 22-29-30	71	19
" " 62	NW. 1/4 " 11-29-20	do	28
" " 67	S. 1/2 S 1/2 " 3-29-20	"	33
" " 88	SW. 1/4 " 28-26-18	"	54
" " 95	NW. 1/4 " 33-26-18	"	61
" " 101	SE. 1/4 " 1-27-18	"	67
" " 103	NW. 1/4 " 1-27-18	"	69
" " 109	SE. 1/4 " 3-27-18	"	75
" " 111	NW. 1/4 " 3-27-18	"	77
" " 122	NE. 1/4 " 12-27-18	"	88
" " 132	NW. 1/4 " 12-27-18	"	98

"This group was located on eleven 160-acre tracts.

"George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	George A. Horn
Stephen W. Dorsey	H. R. McDonald

"ZEE No. 54	SW. 1/4 Sec. 22-29-20	71	20
" " 89	SE. 1/4 " 28-26-18	do	55

"This group was located on two 160-acre tracts.

"George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	J. E. McDonald
Stephen W. Dorsey	G. A. Horn

Casey

Claim Name.	Description.	Record Book.	Page.
"ZEE No. 55	NE. 1/4 Sec. 22-29-20	71	21

"There may be an excess area in this quarter section.

The description does not so indicate, however.

"George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	J. E. McDonald
Stephen W. Dorsey	G. A. Horn [455]

"ZEE No. 71	NE. 1/4 Sec. 4-29-20	71	37
" " 97	NE. 1/4 " 33-26-18	"	63
" " 105	SE. 1/4 " 2-27-18	"	71
" " 116	NE. 1/4 " 5-27-18	"	82
" " 141	SE. 1/4 " 17-27-18	"	107

"This group was located on five 160-acre tracts.

"George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	W. P. Casey
Stephen W. Dorsey	Addison C. Macon

"ZEE No. 56	SW. 1/4 Sec. 15-29-20	71	22
-------------	-----------------------	----	----

"This group was located on one 160-acre tract.

"George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	A. W. Casey
Stephen W. Dorsey	G. A. Horn

"ZEE No. 57	NW. 1/4 Sec. 15-29-20	71	24
" " 61	NE. 1/4 " 11-29-20	"	27
" " 75	NE. 1/4 " 6-26-18	"	41
" " 81	SE. 1/4 " 20-26-18	"	47
" " 83	NE. 1/4 " 29-26-18	"	49

“This group was located on five 160-acre tracts.

George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	J. E. McDonald
Stephen W. Dorsey	B. Adams

“ZEE No.	58	NE. ¼	Sec.	15-29-20	71	24
“	“	92	NE. ¼	“	32-26-20	do 58
“	“	102	SW. ¼	“	1-27-18	“ 68
“	“	107	NW. ¼	“	2-27-18	“ 73
“	“	129	SW. ¼	“	11-27-18	“ 95
“	“	137	SE. ¼	“	15-27-18	“ 103

“This group was located on six 160-acre tracts.

George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	H. R. McDonald
Stephen W. Dorsey	B. Adams

“ZEE No.	59	SW. ¼	Sec.	11-29-20	71	25
“	“	60	SE. ¼	“	11-29-20	do 26
“	“	121	SE. ¼	“	8-27-18	“ 87
“	“	133	NE. ¼	“	12-27-18	“ 99
“	“	134	SE. ¼	“	12-27-18	“ 100
“	“	135	SW. ¼	“	12-27-18	“ 101
“	“	136	NW. ¼	“	14-27-18	“ 102
“	“	138	SW. ¼	“	15-27-18	“ 104
“	“	139	NE. ¼	“	15-27-18	“ 105

[456]

“This group was located on nine 160-acre tracts.

George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	G. A. Horn
Stephen W. Dorsey	Addison C. Macon

Claim Name.	Description.	Record Book.	Page.
"ZEE No. 63	SW. $\frac{1}{4}$ Sec. 1-29-20	71	29
" " 99	NW. $\frac{1}{4}$ " 34-26-18	"	65
" " 118	NW. $\frac{1}{4}$ " 18-27-18	"	84
" " 140	NW. $\frac{1}{4}$ " 15-27-18	"	106
" " 142	NE. $\frac{1}{4}$ " 17-27-18	"	108

"This group was located on five 160-acre tracts.

"George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	B. Adams
Stephen W. Dorsey	W. P. Casey

"ZEE No. 64	NW. $\frac{1}{4}$ Sec. 1-29-20	71	30
" " 66	SW. $\frac{1}{4}$ " 2-29-20	"	32
" " 86	NW. $\frac{1}{4}$ " 26-26-18	"	52
" " 91	SW. $\frac{1}{4}$ " 27-26-18	"	57
" " 100	NE. $\frac{1}{4}$ " 1-27-18	"	66
" " 119	NE. $\frac{1}{4}$ " 8-27-18	"	85

"This group was located on six 160-acre tracts.

"George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	Addison C. Macon
Stephen W. Dorsey	H. R. McDonald

"ZEE No. 65	NE. $\frac{1}{4}$ Sec. 1-29-20	71	31
" " 79	SW. $\frac{1}{4}$ " 19-26-18	"	45
" " 85	SE. $\frac{1}{4}$ " 29-26-18	"	51
" " 87	NE. $\frac{1}{4}$ " 28-26-18	"	53
" " 120	SW. $\frac{1}{4}$ " 8-27-18	"	86
" " 131	SE. $\frac{1}{4}$ " 11-27-18	"	97

"This group was located on six 160-acre tracts.

"George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	W. P. Casey
Stephen W. Dorsey	H. R. McDonald

Claim Name.	Description.	Record Book.	Page.
"ZEE No. 68	SE. 1/4 Sec. 4-29-20	71	34
" " 77	NW. 1/4 " 4-26-18	"	43
" " 84	SW. 1/4 " 29-26-18	"	50

"This group located on three 160-acre tracts.

"George C. Haldeman Albert G. Shaw
 Warren F. McGrath Henry L. Musser
 George W. Dickinson B. Adams
 Stephen W. Dorsey A. W. Casey [457]

"ZEE No. 69	SW. 1/4 Sec. 4-29-20	71	35
" " 115	NW. 1/4 " 4-27-18	"	71
" " 126	SE. 1/4 " 10-27-18	"	92

"This group was located on three 160-acre tracts.

"George C. Haldeman Albert G. Shaw
 Warren F. McGrath Henry L. Musser
 George W. Dickinson N. G. Casey
 Stephen W. Dorsey H. R. McDonald

"ZEE No. 70	NW. 1/4 Sec. 4-29-20	71	36
" " 82	NW. 1/4 " 29-26-18	"	48
" " 93	SW. 1/4 " 32-26-18	"	59
" " 96	SW. 1/4 " 33-26-18	"	62
" " 98	SE. 1/4 " 33-26-18	"	64
" " 104	NE. 1/4 " 2-27-18	"	70
" " 106	SW. 1/4 " 2-27-18	"	72
" " 112	NE. 1/4 " 4-27-18	"	78
" " 114	SW. 1/4 " 4-27-18	"	80
" " 124	NW. 1/4 " 10-27-18	"	90

"This group was located on ten 160-acre tracts.

"George C. Haldeman Albert G. Shaw
 Warren F. McGrath Henry L. Musser
 George W. Dickinson N. G. Casey
 Stephen W. Dorsey G. A. Horn

Claim Name.	Description.	Record Book.	Page.
"ZEE No. 72	SW. $\frac{1}{4}$ Sec. 10-29-20	71	38
" " 110	SW. $\frac{1}{4}$ " 3-27-18	"	76
" " 127	SW. $\frac{1}{4}$ " 10-27-18	"	93
"This group was located on three 160-acre tracts.			
"George C. Haldeman	Albert G. Shaw		
Warren F. McGrath	Henry L. Musser		
George W. Dickinson	H. R. McDonald		
Stephen W. Dorsey	J. E. McDonald		
"ZEE No. 76	NE. $\frac{1}{4}$ Sec. 5-26-18	71	42
" " 123	SE. $\frac{1}{4}$ " 9-27-18	"	89
"This group was located on two 160-acre tracts.			
"George C. Haldeman	Albert G. Shaw		
Warren F. McGrath	Henry L. Musser		
George W. Dickinson	B. Adams		
Stephen W. Dorsey	Addison C. Macon		
"ZEE No. 78	NE. $\frac{1}{4}$ Sec. 19-26-18	71	44
" " 94	SE. $\frac{1}{4}$ " 32-26-18	"	60
" " 113	SE. $\frac{1}{4}$ " 4-27-18	"	79
"This group located on three 160-acre tracts.			
[458]			
"George C. Haldeman	Albert G. Shaw		
Warren F. McGrath	Henry L. Musser		
George W. Dickinson	B. Adams		
Stephen W. Dorsey	N. G. Casey		
"ZEE No. 80	NW. $\frac{1}{4}$ Sec. 20-26-18	71	46
" " 90	NW. $\frac{1}{4}$ " 27-26-18	"	56
"This group located on two 160-acre tracts.			
"George C. Haldeman	Albert G. Shaw		
Warren F. McGrath	Henry L. Musser		
George W. Dickinson	A. W. Casey		
Stephen W. Dorsey	J. E. McDonald		
"ZEE No. 108	NE. $\frac{1}{4}$ Sec. 3-27-18	71	74

“This group located on one 160-acre tract.

George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	A. W. Casey
Stephen W. Dorsey	J. E. McDonald

“ZEE No. 117 NW. $\frac{1}{4}$ Sec. 5-27-18 71 83

“This group located on one 160-acre tract.

George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	Addison C. Macon
Stephen W. Dorsey	J. E. McDonald

“ZEE No. 125 NE. $\frac{1}{4}$ Sec. 10-27-18 71 91

“This group was located on one 160-acre tract.

George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	B. Adams
Stephen W. Dorsey	M. Z. Elliott

“ZEE No. 128 NW. $\frac{1}{4}$ Sec. 11-27-18 71 94

“This group located on one 160-acre tract.

George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	M. Z. Elliott
Stephen W. Dorsey	J. E. McDonald

“ZEE No. 130 NE. $\frac{1}{4}$ Sec. 11-27-18 71 96

“This group located on one 160-acre tract.

George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Halderman
Albert G. Shaw	B. Adams
Henry L. Musser	G. A. Horn [459]

Claim Name.	Description.	Record Book.	Page.
"ZEE No. 143	NW. $\frac{1}{4}$ Sec. 17-27-18	71	109
" " 147	NW. $\frac{1}{4}$ " 27-27-18	"	113
" " 214	NE. $\frac{1}{4}$ " 35-26-18	"	180
" " 239	SE. $\frac{1}{4}$ " 22-26-17	"	196

"This group located on four 160-acre tracts.

"George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	G. A. Horn
Henry L. Musser	J. E. McDonald

"ZEE No. 144	SW. $\frac{1}{4}$ Sec. 17-27-18	71	110
" " 146	NW. $\frac{1}{4}$ " 28-27-18	"	112
" " 148	NE. $\frac{1}{4}$ " 27-27-18	"	114
" " 150	SE. $\frac{1}{4}$ " 27-27-18	"	116
" " 151	NW. $\frac{1}{4}$ " 22-27-18	"	117
" " 160	SE. $\frac{1}{4}$ " 23-27-18	"	126
" " 181	SE. $\frac{1}{4}$, SE. $\frac{1}{4}$, NE. $\frac{1}{4}$, SE. $\frac{1}{4}$	"	
	SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ 9-28-19	"	147
" " 187	NE. $\frac{1}{4}$ Sec. 15-28-19	"	153
" " 188	SW. $\frac{1}{4}$ " 15-28-19	"	154
" " 193	NE. $\frac{1}{4}$ " 13-28-19	"	159
" " 196	S $\frac{1}{2}$ N. $\frac{1}{2}$ " 22-28-19	"	162
" " 201	SW. $\frac{1}{4}$ " 23-28-19	"	167

"This group located on twelve 160-acre tracts.

"George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	G. A. Horn
Henry L. Musser	Addison C. Macon

Claim Name.	Description.	Record Book.	Page.
"ZEE No. 145	NE. $\frac{1}{4}$ Sec. 29-27-18	71	111
" " 149	SW. $\frac{1}{4}$ " 27-27-18	"	115
" " 153	NW. $\frac{1}{4}$ " 26-27-18	"	119
" " 164	SE. $\frac{1}{4}$ " 24-27-18	"	130
" " 185	SE. $\frac{1}{4}$ " 11-28-19	"	151
" " 195	SE. $\frac{1}{4}$ " 13-28-19	"	161
" " 206	SW. $\frac{1}{4}$ " 10-28-19	"	172
" " 208	SW. $\frac{1}{4}$ " 10-28-19	"	174

"This group located on eight 160-acre tracts.

"George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	Addison C. Macon
Henry L. Musser	H. R. McDonald

"ZEE No. 152	SE. $\frac{1}{4}$ Sec. 22-27-18	71	118
" " 162	SW. $\frac{1}{4}$ " 24-27-18	"	128
" " 166	NE. $\frac{1}{4}$ " 6-28-19	"	132
" " 172	SE. $\frac{1}{4}$ " 5-28-19	"	138
" " 180	W. $\frac{1}{2}$ W. $\frac{1}{2}$ " 9-28-19	"	146

"This group is located on five 160-acre tracts.

[460]

"George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	B. Adams
Henry L. Musser	J. E. McDonald

"ZEE No. 154	SW. $\frac{1}{4}$ Sec. 26-27-18	71	120
" " 159	NE. $\frac{1}{4}$ " 23-27-18	"	125
" " 240	NE. $\frac{1}{4}$ " 28-26-17	"	197

"This group is located on three 160-acre tracts.

"George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	H. R. McDonald
Henry L. Musser	J. E. McDonald

“This group is located on 16 160-acre tracts, and one 80-acre tract.

“George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	G. A. Horn
Henry L. Musser	H. R. McDonald

“ZEE No. 165	NW. ¼ Sec.	6-28-19	71	131
“ “ 186	NW. ¼ “	15-28-19	“	152
“ “ 202	SE. ¼ “	23-28-219	“	168
“ “ 218	NW. ¼ “	31-28-20	“	184
“ “ 219	SW. ¼ “	31-28-20	“	185
“ “ 221	NE. ¼ “	32-28-20	“	187
“ “ 224	NE. ¼ “	33-28-20	“	190
“ “ 225	SE. ¼ “	33-28-20	“	191

“This group is located on eight 160-acre tracts.

“George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	B. Adams
Henry L. Musser	Addison C. Macon

“ZEE No. 179	SE. ¼ Sec.	8-28-19	71	145
“ “ 184	SW. ¼ “	11-28-19	“	150
“ “ 189	SE. ¼ “	15-28-19	“	155
“ “ 192	NW. ¼ “	13-28-19	“	158
“ “ 241	SE. ¼ “	28-26-17	“	198

“This group located on five 160-acre tracts.

“George W. Dickinson	Henry L. Musser
Warren F. McGrath	L. B. Dorsey
Albert G. Shaw	F. J. Haldeman

“ZEE No. 183	N. ½ NE. ¼, NE. ¼ NW ¼			
	Sec. 10-28-19	71	149	
“ “ 190	W. ½ NW. ¼, NE. ¼ NW. ¼			
	Sec. 14-28-19	“	156	
“ “ 191	NE. ¼ NW. ¼ Sec. 14-28-19	“	157	
“ “ 209	N. ½ NW. ¼ “ 34-26-17	“	175	

“This group located on two 120-acre tracts and one 80-acre tract and one 40-acre tract.

George W. Dickinson	L. B. Dorsey
Albert G. Shaw	A. W. Casey
Warren F. McGrath	F. J. Haldeman
Henry L. Musser	G. A. Horn

“ZEE No. 194	SW. ¼ Sec.	13-28-19	71	160
“ “ 212	NW. ¼ “	35-26-18	“	178

“This group located on two 160-acre tracts. [462]

George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	B. Adams
Henry L. Musser	A. W. Casey
Henry L. Musser	

“ZEE No. 198	SE. ¼ Sec.	22-28-19	71	164
“ “ 200	NE. ¼ “	23-28-19	“	166
“ “ 205	SW. ¼ “	26-28-19	“	171
“ “ 207	SW. ¼ “	25-28-19	“	173
“ “ 210	NE. ¼ “	34-26-18	“	176
“ “ 211	SE. ¼ “	34-26-18	“	177
“ “ 216	NW. ¼ “	30-28-20	“	182

“This group located on seven 160-acre tracts.

George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	A. W. Casey
Henry L. Musser	H. R. McDonald

“ZEE No. 203	NW. ¼ Sec.	26-28-19	71	169
“ “ 213	SW. ¼ “	35-26-18	“	179

“This group located on two 160-acre tracts.

George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	A. W. Casey
Henry L. Musser	Addison C. Macon

Claim Name.	Description.	Record Book.	Page.
"ZEE No. 204	S. $\frac{1}{2}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ Sec. 26-28-19	71	170
"This group located on one 120-acre tract.			
"George W. Dickinson	L. B. Dorsey		
Warren F. McGrath	F. J. Haldeman		
Albert G. Shaw	A. W. Casey		
Henry L. Musser	J. E. McDonald		
"ZEE No. 215	SE. $\frac{1}{4}$ Sec. 35-26-18	71	181
" " 217	SW. $\frac{1}{4}$ " 30-28-20	"	183
"This group located on two 160-acre tracts.			
"George W. Dickinson	L. B. Dorsey		
Warren F. McGrath	F. J. Haldeman		
Albert G. Shaw	Addison C. Macon		
Henry L. Musser	J. E. McDonald		
"ZEE No. 244	NE. $\frac{1}{4}$ Sec. 33-26-17	71	201
"This group located on one 160-acre tract.			[463]
"B. Adams	G. A. Horn		
A. W. Casey	Addison C. Macon		
W. P. Casey	H. R. McDonald		
M. Z. Elliott	J. E. McDonald		
"ZEE No. 250	SW. $\frac{1}{4}$ Sec. 4-31-22	71	202
" " 251	N. $\frac{1}{2}$ S. $\frac{1}{2}$ " 10-30-21	"	203
"This group located on two 160-acre tracts.			
"B. Adams	G. A. Horn		
N. G. Casey	Addison C. Macon		
W. P. Casey	H. R. McDonald		
M. Z. Elliott	J. E. McDonald		
"ZEE No. 252	Lots 1, 2, 3 and SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ 10-30-21	71	204

Mr. PRINGLE.—On behalf of the Dominion, if the Court please, our records were all destroyed some years ago by fire, so I can't go that far. To the best of my knowledge, the Dominion began producing oil in the early part of 1910, and since that time has been producing. It is now producing,—it has four wells,—I think producing about 5,500 barrels a month, and that condition prevailed at the time of the commencement of the suit and is continuing now.

Mr. HALL.—I think that statement is sufficient, your Honor.

Now, with the reservation that the Government has not gone into the question of damages, if any, or an accounting for any oil that has been removed, my understanding being it will be agreeable to the Court and counsel that those questions may be reserved until such time as the Court will render a decree in this case, if they ever become material, the Government rests its case. [465]

The defendants, to sustain the issues on their part, offered the following, to wit:

Testimony of E. W. King, for Defendants.

E. W. KING, a witness called in behalf of the defendants, having first been duly sworn, testified as follows:

Direct Examination.

(By Mr. WEIL.)

I reside at Bakersfield, California. I am general manager of the King Lumber Company. We have been engaged in the lumber business since 1903. During the years 1909 and 1910 I did business in the

(Testimony of E. W. King.)

oil fields, supplying rig lumber. Our records show that we delivered lumber to the Northwest quarter of Section 15, township 31 South, Range 22 East, sometimes designated as the Dominion or British-American property. Our delivery tags show that the following amounts of lumber were delivered, to wit: On September 17, 1909, \$49.88, \$60.61, \$49.68; September 18, 1909, \$50.51, \$64.61, \$51.22, \$45.94, \$45.60, making a total of two days' charges of \$417.95. That was rig lumber that was delivered. The bill which you have just exhibited to me was the original bill submitted by our company for that. That describes the lumber that was delivered and the dates on which it was delivered.

Mr. WEIL.—With your permission, I will offer this in evidence. It is as follows, to wit: [466]

“(On Billhead of King Lumber Co.)
 Bakersfield, Cal., Sept. 22, 1909.
 For Acc't of Frank Strong.
 Destination—McK.

c/o A. H. Butler, Jr. McK.

"Date. No.		Pieces.	Size.	Length.	Description.	Price.	Amount.	Total.
9/17	1	16/16	32	O. P.	683			
	2	"	16	"	683			
	1	16/18	"	"	384	1750	28.50	49.88
	1	12/30	26	W. Beam	780			
	1	14/14	14	O. P.	228			
	6	2/10	16	"	160			
	1	5/16	12	"	80			
	1	"	16	"	107			
	2	16/16	18	"	768	2123	28.50	60.51
	1	14/14	14	"	228			
	3	16/16	16	"	1023			
	8	2/ 6	20	"	160			
	1	5/16	12	"	80			
	14	"	18	"	252	1743	28.50	49.68
9/18	3	12/12	24	"	864			
	1	"	16	"	192			
	45	1/12	16	"	720	1776	28.50	50.51
	9	8/ 8	20	"	960			
	2	"	22	"	235			
	30	2/ 8	16	"	640			
	1	24/24	9	"	432	2267	28.50	64.61
	10	6/ 6	16	"	480			
	1	14/14	16	"	261			
	4	4/ 4	16	"	85			
	16	2/ 4	16	"	171			
	4	4/ 6	20	"	160			
	24	2/10	20	"	640	1707	28.50	51.22
	7	1/12	16	"	112			
48	"	20	"	960				
30	"	18	"	540	1612	28.59	45.94	
52	1/12	20	"	1040				
40	"	14	"	560	1600	28.50	45.60	417.95

Del. from McKittrick Yard.

(Testimony of E. W. King.)

The lumber there indicated was not sufficient for a complete rig. There was other lumber delivered there on September 21, 1909. That lumber amounted to \$82.81. There was 2,307 board feet of lumber in that delivery. The bill which you have exhibited to me is the original bill that was submitted by our company. It correctly describes the kind of lumber and the dates on which it was delivered.

Mr. WEIL.—I will ask that this be marked Defendant's Exhibit "B" and offered in evidence, which is as follows, to wit:

Defendants' Exhibit "B."

"THE KING LUMBER CO.

Redwood, Oregon and Mountain Pine Lumber.

Rig and Derrick Timber a Specialty.

Shakes, Shingles, Lath, Doors, Windows,

"Cartage 50 cents per M. Minimum charge 25 cents. Interest charged at rate of 1 per cent per month on all accounts after 30 days.

Blinds, Sash, Weights, Cord.

Bakersfield, Cal., September 23, 1909.

For Acc't of Frank Strong.

Destination—McK.

Date.	No.	Pieces.	Size.	Length.	Description.	Price.	Amount.	Total.
9/21	1	16	16	24	O. P. 512			
	8	2	10	18	" 240			
	6	2	8	20	" 160			
	55	1	6	"	" 550			
	48	1	12	16	" 768	2230 \$28-½	63.56	
	2	4	5	14	Oak, 47			
	1	3	12	10	" 30	77 25¢	19.25	82.81

O. K.—A. H. B. Jr.

Del. from McKittrick Yard."

(Testimony of E. W. King.)

At the time of the delivery of this extra quantity of lumber there was not then sufficient lumber on the ground to erect a rig. On October 29, 1909, we delivered lumber of the value of \$44.46, and also delivered another load on the same date amounting to \$44.46. The final delivery of lumber was made on December 1, 1909. It consisted of the wheel material, such as cants, and so forth. [468]

Q. Do you know by whom this lumber was ordered?

A. My records show—well, there is a notation made here by the man who was representing us at that time, Mr. McWane,—he sends the notation, “First charge. This was ordered by M. Z. Elliott. Charge to Frank Strong. Send bills to A. H. Butler, Jr., McKittrick, to be O. K.’d. Respectfully, McWane.”

There was a reason why the whole of this rig lumber was not placed on the ground at the time the first lumber was put on there. We were delayed in getting the shipments of lumber owing to the car shortage which prevailed at that time, and also owing to the fact that the sawmills in Oregon and Washington were snowed in for several weeks. Mr. McWane telephoned to us a number of times and wanted to know how soon we could get it and promise delivery of the balance of that lumber. We could not have made deliveries of the balance of the lumber at any time earlier than we did. The M. J. McWane I have referred to was the manager of our McKittrick branch at that time. That was the yard

(Testimony of E. W. King.)

where the order came in. We were disappointed ourselves in our efforts to get lumber.

Q. And did you make promises to these people to deliver lumber and then found yourself obliged to disappoint them on account of these causes?

A. Well, we were obliged to disappoint a number of people at that time.

I don't think it would have been possible at that time to have gotten this lumber any faster than it was gotten. The condition of other dealers at that time was about the same as our own, we were all in the same fix. We were as well, if not better, equipped than other dealers in the field who furnished lumber for the oil fields. We had five yards. We were just as well equipped to deliver the lumber as anybody else; probably better because we [469] had five yards in the territory at that time. In my testimony I referred to a rig. By this I mean an oil well drilling derrick.

Cross-examination.

(By Mr. HALL.)

I have no record to show the dates on which this lumber was ordered. My record only shows the time it was delivered. At the time this lumber was delivered my headquarters were at Bakersfield. Mr. McWane of the McKittrick yard telephoned into Bakersfield and wanted to know if it was satisfactory or would be satisfactory to deliver lumber to these people, and asked for credit. That was just a few days prior to the date of delivery; I don't know just what date. That is the first I knew of any order

(Testimony of E. W. King.)

being given by these people for lumber for this property. I don't remember whether they came to see me about it. I have no record that shows that they made application for this lumber at any time prior to this date that our man from McKittrick 'phoned in to me about the matter of credit. That was just about a few days before the first delivery of lumber on the ground. McWane was our yard foreman or manager at McKittrick. I now hand you the original delivery tags. Those are the delivery tags when the lumber was loaded.

Mr. HALL.—Here is a note that says, "This was ordered by M. Z. Elliott, charge to Frank Strong, send all bills to A. H. Butler at McKittrick to be O. K.'d. Respectfully, McWane." Down at the bottom I notice punched out is "9." It looks like part of one of the figures is punched out, like "9-20-09."

A. That I didn't notice.

I have examined that paper; I couldn't tell what that is. I don't think that is a date. It could not have been the date [470] because the charge was made on the 17th. McWane sent this note in to us. I don't know what was punched out there. It might have been the 2d, but I wouldn't think so. I state that this delivery was made on these dates merely because of these delivery tickets which I have here. I know nothing about it personally, other than that. The record of those deliveries was made at McKittrick by McWane. The northwest quarter of Section 15 is some six or eight or ten miles from Mc-

(Testimony of E. W. King.)

Kittrick. The lumber was hauled to the ground by wagon. It was not hauled by our teams. I have no record as to when the teams arrived with the lumber on the ground. I knew nothing about it after it left our yard. We delivered the lumber to an independent hauler and he took it away from the yard. We delivered it to some hauler, and we made the notation on our ledger-card showing where it went to. Our records don't show whether or not it went there. I don't know. We didn't follow it to see where the hauler put it. The material delivered under the dates of September 17, 1909, and September 18, 1909, was all rig lumber. I don't know when the cabin lumber was delivered. The lumber delivered on September 21st was rig lumber. The lumber delivered on October 21st was rig lumber. I have not found any of our records showing that we delivered any cabin lumber. We made a delivery on November 24, 1909, amounting to \$62.36. The notation on the tag states, "To apply on rig sold in September." That is rig lumber. On November 24th there is a charge of \$62.36. McWane made the notation on there "To apply on rig sold in September." The price of lumber was going up, and this rig was sold in September, and we couldn't charge the higher prices of lumber. That was a delivery of rig lumber. We had a delivery of rig lumber there as late as November 24th. I haven't any record of the delivery [471] of any cabin lumber. There was no shortage of cabin lumber during this time. They could use most anything

(Testimony of E. W. King.)

for a cabin. We very seldom had a shortage of that stuff.

From the 1st of January, 1909, on, we had a yard at Bakersfield, one at McKittrick, one at Maricopa, and one at Fellows. There was activity in drilling in this field during the year 1908. We delivered quite a lot of material in the Midway field in 1908. We had quite a bit of trouble securing rig material during that period.

Q. How long during the year 1908 would it take to get the lumber for a complete rig?

A. Well, that often depends on whether you happened to have it in stock, or whether you had to order it from the north.

Q. Assuming I was a man there in the field and I had a location I wanted to drill up, and I came to your yard on the 1st of January, 1908, and said, "I want the lumber for a complete standard drilling rig." About how long would it be before you could deliver the lumber?

A. Well, that all depends on the price you want to pay for it.

Q. Well, the ordinary average market price that was going at that time.

A. Well, if you were taking it out of the yard and we happened to have it, you would have gotten it immediately; but the yard stock was very badly broken during the years 1908, 1909 and 1910; that was during the boom years, and it is hard for me to tell at this time what the exact condition was, other than I

(Testimony of E. W. King.)

know we were delayed in a number of cases in making delivery.

Q. Was this delivery that you recounted here upon the order of Mr. Elliott an unusual length of time, or was it a usual length, or about the length of time it took you to deliver this material? [472]

A. Well, I don't remember all the detail that happened on this particular order, other than the general situation. The condition at that time was bad to get delivery of material, and during the boom at that time in the oil fields, why, naturally it drained our stocks out of different yards, so it was nearly impossible for us to fill a complete rig order at any one time. After the 1st of July, 1909, it was not possible for us to have delivered rig material for a complete rig eight or ten miles from McKittrick within 30 days from the day it was ordered. We used all of our efforts to get material for these people and for other customers, and we were unable to do it. A man might have been delayed 60 or 90 days. Without going back to our records I wouldn't say I know of a case where a man was delayed a full 90 days. In the year 1909 there was one yard operating in McKittrick. We were the only lumber-yard there. There was one at Maricopa and one at Fellows. We were the only ones operating in these towns. There were two lumber-yards in Bakersfield in 1909, ourselves and another one. During the year 1909 a great deal of rig material was being furnished various parties by the yards in San Francisco and Los Angeles.

Testimony of A. H. Butler, Jr., for Defendants.

A. H. BUTLER, Jr., a witness called on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. WEIL.)

During the month of September I had charge, in a way, of this property on the northwest quarter of Section 15. The notation "O. K. A. H. B., Jr.," on Exhibit "B" is in my handwriting. If that is the original bill, the lumber was delivered on the land on the [473] northwest quarter on that day. That is my O. K. approving the bill. I would not have O. K.'d the bill if the lumber had not been delivered. You have shown me Exhibit "A." I know that lumber went on the ground, but I could tell better by the team tickets that were issued by the King Lumber Company as to when it was delivered.

Q. Mr. Butler, I call your attention to these records of the King Lumber Company, and will ask you if the lumber described in these records, being the same lumber that is on these bills, being copies of the team tickets, was delivered on the land. There is one dated the 17th of September, '09, and there is one showing further deliveries on that date.

Mr. HALL.—On that land?

Mr. WEIL.—Yes.

Q. I hand you the bills describing them (handing bills to witness). A. Yes, sir.

Q. And can you say from looking at that now that that lumber was delivered on that land?

(Testimony of A. H. Butler, Jr.)

A. This lumber was delivered on 15, the northwest quarter.

That lumber was actually used in the construction of the derrick that was subsequently built on the land by Henry. I knew a firm named Hickock and Hubbard, in McKittrick. They were engaged in the teaming business. They did teaming for us. My recollection was that Jack O'Meara and Hickock and Hubbard were associated together, and I think three of Jack O'Meara's teams hauled this lumber; but they had some business together where they split up the money, I don't know.

Q. I will show you a bill of Hickock and O'Meara, which reads, "September 17th, 2 4-horse teams, one day hauling rig timber, 1 6-horse team, one day hauling rig timber; on the 18th of September, 2 4-horse teams, one day hauling rig timber; [474] September 18th, 1 6-horse team hauling rig timber; September 19th, 2 4-horse teams hauling rig timbers, and on the 21st, 2 6-horse teams working for one day hauling rig timbers." Refresh your recollection from that, if you can. Would you say that these teams described in these bills were hauling this rig timber which is described in the bill from King Lumber Company, and which went on to the northwest quarter? A. They were.

Mr. WEIL.—I will offer this in evidence and ask that it be marked Defendants' Exhibit "C."

The COURT.—What is the amount of that?

Mr. WEIL.—That was \$99 for teaming.

Which said exhibit "C" is as follows, to wit:

Defendants' Exhibit "C."

"McKittrick, Cal., Sept. 30, 1909.

"Mr. Frank Strong,

To Hickox & Hubbard, Dr.

Teamsters and Contractors,

Road Building and Sump Hole Work.

Bills Payable Monthly.

Sept. 17	2-4 horse teams	1 day	hauling	rig	timber.....	20.00
" "	1-6 " "	1 " "	" "	" "	.....	13.00
" 18	2-4 " "	1 " "	" "	" "	.....	20.00
" "	1-6 " "	1 " "	" "	" "	.....	13.00
" 19	2-4 " "	1 " "	" "	" "	.....	20.00
" 21	1-6 " "	1 " "	" "	" "	.....	13.00
						<u>\$99.00</u>

Pd. by J. McD."

Q. I show you another bill from Hickox and Hubbard, which carries forward the bill rendered for September, \$99, and indicates that on October 29th, 2 4-horse teams to do hauling, "rig T.," \$20. Refresh your recollection from that. Can you say on that day there was more of this rig lumber hauled out? A. Yes, sir.

Q. On that property?

A. On that property. [475]

Mr. WEIL.—I will ask that this be marked Defendants' Exhibit "D" and offered in evidence, as follows, to wit:

Defendants' Exhibit "D."

"(On Billhead of Hickox & Hubbard.)

McKittrick, Cal., Oct. 31, 1909.

"Mr. Frank Strong,

To Hickox & Hubbard, Dr.

Oct. 29	2-4 Horse team 1 day hauling rig T.	20.00	
	Bill rendered for Sept. ....	.99.	\$119.00

North Midway Oil a/x

OK. M. Z. E.

Paid Nov. 9, 09.

Hickox & Hubbard.

By S. A. H.

(Please receipt this bill and mail to Roy Jones, Santa Monica, Cal.)"

My recollection was that I ordered this lumber from McWane of the King Lumber Company. He was manager of the yard at McKittrick. I ordered it several days before any delivery was made of any part of it. Mr. McWane thought he could deliver it all very soon. He thought he could deliver the complete drilling rig very soon. I had further conversations in regard to its delivery. I saw McWane daily, and I probably asked him three or four times a day if he had heard from the head office, to see if they could make delivery, and I would imagine at least two or three times a week he rang up the head office asking when the lumber would be out. He rang up in my presence. I remember the firm of Ridenour & Webber. They worked for me a great deal, and I told them that our crowd were going to drill on 15, and when I had orders to commence drill-

(Testimony of A. H. Butler, Jr.)

ing they could build the rig. The building of the rig was delayed because we didn't have the material. I have in mind the material that is described in the original bill. The material that was lacking for the completion of the rig was the leg material, 2 by 10's. You couldn't build a rig without the leg material. You could put the floor on the sills then, but you [476] couldn't build a derrick. It would hardly be worth while starting on a rig without having the leg material. I didn't let Ridenour & Webber go. I kept them as long as I could, and they got out on their own accord. There was difficulty in getting rig-builders in the months of September and October. I don't recall exactly the number of men on this land from the time the lumber was put on there until the rig was built. There was all the way from 3 to 8 or ten. These men were getting ready to operate, and building the road and sump-hole for the derrick, clearing brush.

Q. And how early do you remember that you first had these two or three or ten men on the land?

A. I believe it was the latter part of September.

Q. Well, did you leave that lumber stay on the land alone for any time at all without anybody on there?

A. I don't remember. They may have been on there the same time the lumber went.

Q. Anyway, they were there shortly after, were they? A. Yes, sir.

We made efforts on behalf of the people that operated this land to get water there. I spoke to Mr.

(Testimony of A. H. Butler, Jr.)

Elliott, who was the field man for the Santa Fe Water Company. He said when he could get around to it he would try and give us water. I didn't have anything to do with the ultimate getting of the water, but I know that they got it from the Union line that went to section 10. And the Union got the water from the Santa Fe, I believe; I am not sure.

Cross-examination.

(By Mr. HALL.)

At this time myself and my associates were not engaged in sending rig timber out to any other section than the northwest [477] quarter of Section 15.

Q. You were not improving or developing any other lands except that particular land?

A. Not myself. Our company was interested in the south part of the land, but that was under the superintendency of Mr. Van Slyke.

Barnesdale, Drake and Yancey were developing that part of the land. I don't know where they were getting lumber about that time. I didn't go down onto that part of the land very much. They were hauling a lot of supplies from the supply houses, pipe and materials like that. Whether they hauled lumber, I don't know. They had a derrick up early in the summer of 1909. They were drilling by the time I got there with our lumber in September, 1909. Barnesdale, Drake and Yancey commenced their operations on the south half of the section along about April or May, 1909, I think; I am not sure of that. I was in McKittrick when they commenced

(Testimony of A. H. Butler, Jr.)

their operations. I don't know how far down they were on their wells when we commenced our operations. They were getting their water from a pipeline from Crocker Springs. I was there when that system was put in. It took them ten or fifteen days in laying the pipe-line. I don't know how long it took to put the wells down. They were in full blast, running their wells with water, and all necessary materials and supplies, at least early in June, 1909. That was considered shallow territory. It all depends upon the formation as to the amount of water that it will take to drill the first few hundred feet of a well. It is all according to the formation, but I should imagine it would take just about as much water for the first four hundred feet as for the next four hundred. I have drilled. The formation on this [478] particular tract of land is shale. Shale is easy to drill in some cases; there is some awful hard shale. The purpose of the water is to make the formation stand up and keep it from caving in. The shale formation encountered on this land does not stand up better without water than other formations. It stands up easier than sand and boulders. Shale lays in layers, and there is a good many crevices, and it is liable to give way in time. Under ordinary circumstances it would take from 100 to 125 barrels of water per day to drill down through this shale on Section 15. I don't know when they reached oil on the south part of the section. I think they had reached oil when we commenced our operations. I had nothing to do with our operations on this

(Testimony of A. H. Butler, Jr.)

tract when they reached the oil. The drilling commenced by Barnesdale, Drake & Yancy on this section was considered pioneer operations. During that summer I lived in McKittrick and spent a great deal of time up north of McKittrick. I was down in this neighborhood frequently during the summer. There was a great deal of jumping going on on account of this activity out on the frontier. Our people had considerable trouble with our lands over this question of jumping. Some people jumped Section 30, and we lost that section on account of that.

Q. What was the factor which induced you to finally give this order to the King Lumber Company for this drilling rig?

A. I was advised from—by either Mr. Strong or Mr. Elliott that they were ready to commence drilling for oil.

Q. Was that the first instruction you had in regard to that? A. Yes, sir.

Q. How long after you received those instructions from Mr. Elliott or Mr. Strong did you go to the King Lumber Company? [479]

A. Probably 15 or 20 minutes.

Q. Within 15 or 20 minutes. And did you telephone to the King Lumber Company at Bakersfield for a credit on this material?

A. Mr. McWane did.

Q. Mr. McWane did in your presence?

A. Yes, sir.

Q. And you were there at the time you gave the

(Testimony of A. H. Butler, Jr.)

order and he telephoned in? A. Yes, sir.

Q. To Mr. King at Bakersfield? A. Yes, sir.

Q. And the credit for your company or your associates was negotiated at that time over the telephone?

A. Yes, sir.

Q. Now, what authority did you have at that time from Mr. Strong or Mr. Elliott in regard to this drilling? A. Verbal authority over the phone.

Q. From where? A. Los Angeles.

Q. And what did they tell you to do, order the lumber?

A. Told me to order the lumber for a complete drilling rig, and to haul it out to Section 15, northwest quarter.

Q. And those were the instructions you had at that time? A. Yes, sir.

Q. Was there any discussion at that time between you and Mr. Strong and Mr. Elliott over the telephone about jumpers bothering the locations out in that neighborhood? A. I think not.

Q. Had you advised them of the situation in regard to jumpers out there at that time? [480]

A. I had told them that there were jumpers down near Taft, and down along Fellows.

Q. Well, it had become at that time—this jumping problem had become a rather serious proposition up through that oil field, had it not?

A. It was not serious, that is, on 15.

Q. Well, when was it they jumped section 30?

A. I don't remember.

Q. It was serious with others, was it not?

(Testimony of A. H. Butler, Jr.)

A. Yes, sir.

Q. A good deal of display of guns and warfare throughout that entire field over this jumping proposition.

A. There wasn't any display of warfare; there was a display of guns.

Q. And those men out there guarding the lands were what were known as gun-fighters, were they not? A. Yes, generally.

Q. And some men were trying to take possession of other men's lands by force of arms, or display of arms? A. Yes, sir.

Q. And that was known throughout that entire field there during that summer, was it not?

A. It was.

Q. This jumping problem was largely centered around lands where there were no structures erected upon them, was it not?

A. That didn't make any difference with some of them.

Q. Structures, or no structures, they jumped any way? A. Yes.

Q. You all felt a little bit safer up in that vicinity, did you not, if you had some sort of a structure erected on your land? [481]

A. Why, I don't think so.

Q. Some of the people merely had cabins on their land, did they not? A. Yes, sir.

Q. Some of the locations that were held under oil land, or supposed oil land locations, were simply occupied by armed men in cabins? A. Yes, sir.

(Testimony of A. H. Butler, Jr.)

Q. And some men merely had assessment derricks upon their locations, did they not? A. Yes, sir.

I spoke to Ridenour and Webber about July or August, 1909. That was before I had my instructions from Strong and Elliott to buy the rig timber for the land. I knew they contemplated drilling very soon. I had no definite instructions to start when I spoke to Ridenour and Webber. I was not myself possessed of sufficient authority to make contracts without any instructions from Mr. Strong and Mr. Elliott. I was acting entirely under their orders and directions on this particular land. I spoke to Ridenour and Webber and told them I might want them to build a derrick, but there was no contract definitely closed at that time. I did not set any date when they should commence the erection of a derrick on this land. We did not agree upon the price. There was nothing said with them about the price, but there was a regular wage scale for building derricks, a contract price. That was generally known throughout the field. There was no definite agreement between us what the prices should be for drilling this rig about which I spoke to Ridenour and Webber. [482]

Redirect Examination.

(By Mr. WEILL.)

I employed Mr. Best. Mr. Best was working for the Brookshire as a tool dresser when I first spoke to him. I first spoke to him about six weeks, I imagine, or possibly two months before the rig went out, before he came to work. He came to work about

(Testimony of A. H. Butler, Jr.)

the time the rig went out. Mr. Best actually came on the land some time between the 15th and 25th of September; I don't remember the dates exactly. I heard Mr. Best testify that he came on about November 1st. I thought he was out there before that time. Regardless of when he came on the land, I spoke to him about six weeks before he came. Mr. Best had drilled for me up north of McKittrick, and I liked his work, and I asked him if he wanted to drill for me again, and he said he did, that he had a tool dresser's job at about half the money, and he was glad to leave that job and come with me. He did not leave right away. He didn't leave because I didn't have authority to take him on at that time, but I knew we were going to start up, and I wanted him to work for me. He couldn't work until the derrick was up. But according to my recollection, he came out some time before the derrick was completed. He was employed for the specific purpose of drilling that well.

Recross-examination.

(By Mr. HALL.)

Q. At the time you first spoke to him, that you place at some month or six weeks before he came out there, you then did not have any authority to employ him, I believe you said? A. No, sir.

Q. You didn't have specific authority then from Strong and [483] Elliott to employ this man, or any other man, to drill that well at that time?

A. I knew they were going to start up very soon, and I spoke to Mr. Best.

(Testimony of A. H. Butler, Jr.)

Q. And that was just a personal matter between you and him? A. A personal matter.

Q. And you didn't employ him definitely?

A. No, sir.

Redirect Examination.

(By Mr. WEIL.)

Q. But your principals ratified what you had done with him, and took what you had arranged?

A. They left it with me to hire what men I wanted.

Recross-examination.

(By Mr. HALL.)

Q. And when did you definitely tell Best to come out and go to drilling?

A. As I formerly said, between the 15th and 25th of September, but Mr. Best's testimony said about the 1st of November.

Q. As soon as you hired him definitely he came on the land? A. Yes.

Testimony of Joseph P. McDonnell, for Defendants.

JOSEPH P. McDONNELL, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. WEIL.)

I reside in Watsonville, California. My full name is Joseph P. McDonnell. In the months of August, September and October, 1909, I was an oil well machinery salesman for the California [484] National Supply Company, with headquarters at Santa Maria. I used to make trips over in the oil districts

(Testimony of Joseph P. McDonnell.)

surrounding McKittrick, and had charge of the stores, sort of district manager. The store at McKittrick was under my direction.

I know the property described as the northwest quarter of Section 15, Township 31, Range 22, that was afterwards operated by the Dominion Oil Company. I am the party named in the lease from the North Midway Oil Company to Joseph P. McDonnell, involving the south half of that quarter. I would say the time I became interested in that land was about the middle of September. Mr. W. O. Maxwell and I drove over from Santa Maria. We were looking for some oil property, and we met Mr. Butler and Mr. Frazier, and they said there was 80 acres of land out in Section 15 that could be purchased,—a lease on 80 acres of land that could be purchased. We went and looked at the property and we agreed to purchase it for the sum of \$3,000. We agreed to purchase the lease for \$3,000. Those dealings were with Butler and Frazier. Mr. Butler claimed to represent the British-American Oil Company. As a result of the negotiations with Mr. Butler we made up an agreement, agreed to purchase this here and pay the money as soon as the lease was signed up. Mr. Maxwell stayed there at McKittrick and I came to Los Angeles, endeavoring to get this lease. A memorandum agreement was signed up. Mr. Butler signed on behalf of the British-American Oil Company, I believe. I do not know what has become of that memorandum that was signed at that time. Mr. Maxwell had the memorandum. I don't

(Testimony of Joseph P. McDonnell.)

know what has become of it. I would say that this memorandum was signed about the 20th of September. I fix the date from my understanding the lumber was delivered on the ground there some time about the middle of September, [485] and we took this lease over about a day or two after the lumber was delivered. That is the only way I have of fixing it. I did not see the lumber delivered. I was told the lumber had been delivered a day or two before. I think from what I understand they were hauling it at the time we were there figuring on this lease. The arrangement was that we were to pay for the lumber; we were to reimburse the British-American Oil Company for this lumber, which we did, some time later. We made arrangements with the California National Supply Company in regard to equipment. I told Mr. Frazier, who was in charge of the company there, to set aside a complete drilling outfit for us, that we were going to operate the property. By complete drilling outfit I mean the rig-irons and tools, cordage, boiler, engine, fittings, and all pipe and stuff like that. I believe he did so. As near as I can recall, I would say that the cost of this equipment that I directed Mr. Frazier to set aside would be \$7,500. The lease from the North Midway Oil Company to myself was dated November 20, 1909. This lease was made long after the original negotiations. I must have worked on it six or eight weeks down here. I had it changed a dozen times. In the meantime we were proceeding with our efforts toward the development of the land.

(Testimony of Joseph P. McDonnell.)

Q. You understood, did you, that this arrangement you had with Butler was subject to the approval of the company? A. Yes.

Q. He had no written authority to act on behalf of the British-American in making this lease, so far as you know, had he?

A. Oh, I knew his father was interested in it; I thought he was their agent.

Q. You thought he was their agent, but you wanted the [486] lease from the company, naturally.

A. From the British-American.

Q. And the negotiation over that occupied a considerable length of time, did it?

A. Yes, it was pretty hard to get the company together down here.

I think I left the field a day or two after these negotiations. I doubt whether I was over there at any time again before the rig was up. My knowledge of anything that happened on the land itself between the time I took this memorandum and the time the rig was built would be purely hearsay. I intended to develop this land at the time I made these arrangements. I had the financial means necessary to carry it on.

Cross-examination.

(By Mr. HALL.)

I first learned that I could secure a lease on the south half of the northwest quarter of Section 15 about the 17th to the 20th of September. I learned that from Mr. Frazier and from Butler. Mr. Frazier was employed by the National Supply Com-

(Testimony of Joseph P. McDonnell.)

pany at McKittrick. That was the same company I was working for. That company was engaged in selling oil well machinery. I was engaged as an agent or directing manager of that company. Mr. Frazier said there was an 80-acre lease to be had out there, and he thought it was pretty good property, and it could be had very reasonable, something along that line. He said that he and A. H. Butler, Jr. had this 80-acre lease. I met Butler at the time of this conversation. He and Frazier were together at that time. I believe we went out and saw the land at that time. I think Mr. Maxwell and I went out first; I think we had a roadster [487] machine. Mr. Maxwell and I were associated together in the lease. Mr. Frazier did not become a partner of mine in that transaction. Butler said the British-American wanted to lease that land, and if we would go ahead and operate it they would give us this lease for \$3,000, which we agreed to take.

Q. Did Mr. Butler exhibit to you any writing as his authority to act as agent for the British-American Company?

A. He did not. At that time we called up the the British-American in Los Angeles by telephone.

Q. He did not assume to act for the British-American Company in that transaction?

A. No; I understood he was an agent, though.

Q. Beg pardon?

A. I understood he was their agent, is all.

Q. Did he say he had authority to sign any lease or anything of that sort?

(Testimony of Joseph P. McDonnell.)

A. Well, I don't remember.

Q. Did he sign any lease?

A. He did not; no, sir.

Q. What was the substance of this memorandum that you wrote up?

A. That he agreed to furnish a one-eighth royalty 80-acre lease on this land for a consideration.

Q. For a consideration, and you agreed to enter into the lease within a certain time?

A. We agreed to enter into the lease immediately, as soon as he could get it fixed up with the British-American.

Q. As soon as he could get it fixed up? A. Yes.

Q. This memorandum then was more of an option for a lease, [488] was it not?

A. Well, yes, I would say so.

Q. It simply said it was an option, that you would agree to make this lease if he could get the British-American Oil Company to consent to it?

A. No; we dealt right with the British-American Oil Company. They absolutely told us we could have this lease. I called up W. Z. McDonald down here, and he said everything was all right, to come down and we would fix the matter up.

Q. Well, did you come down then?

A. I did; yes, sir.

Q. When was it you came down to see McDonald?

A. Well, I would say it was immediately after we made that transaction in McKittrick, in a day or two.

Q. And you went down there then within a few

(Testimony of Joseph P. McDonnell.)

days after the 20th of September? A. Yes, sir.

Q. And you conferred with Mr. William Z. McDonald? A. Yes, sir.

Q. Did you exhibit to him this memorandum you had entered into, or this option? A. I did not.

Q. You told him of it, did you? A. I did.

Q. And did he ratify it?

A. He ratified it; yes, sir.

Q. How long after that was it before you actually came to an understanding with Mr. McDonald that you were to have a lease upon the terms which eventuated and were incorporated in the lease of November 20, 1909? [489]

A. Well, I think it was pretty near all that time. There was one particular clause in it there, that we would not lease, sublease this property in case we wanted to do it, and we had a hard time to get on. There were some people lived in Santa Monica, I believe, that were the original owners of the lease.

Q. And you were haggling back and forth over the terms of this lease until November 20, 1909?

A. Well, I would not say that.

Q. What is objectionable in that statement, the term haggling?

A. Well, McDonald was away a good deal, and I was away a good deal, and he assured us we were going to have the lease and we went on spending our money, and on the 7th day of November, we paid Butler \$1,500, so we would not have paid that if we were haggling up to the 20th on that lease.

Q. When did you finally come to terms on the

(Testimony of Joseph P. McDonnell.)

lease? You said you had trouble over this clause.

A. We practically came to terms when I came down, because McDonald said, "Anything you want, I will get for you, but it is hard to get these people together."

Q. But you and McDonald came to terms?

A. Yes.

Q. The trouble with it was McDonald could not get the people who were really responsible to agree to this clause, was that it?

A. Yes. McDonald was president of the company, I believe, at that time.

Q. And he could not get the board of directors—

A. The other directors, together.

Q. — to agree on this clause as to subleasing, and that was the bone of contention between you, or the reason why the [490] lease was not closed until November 20th? A. Yes, sir.

I could not say when the first improvements of any sort were put upon the property after I came down to See McDonald, because Mr. Maxwell was looking after that end at McKittrick. I think there was a small amount of lumber on the property when I went out to see it about September 17th or 20th. I believe there were some men there. I couldn't say how many. We didn't stay very long. There were men scattered all through that country. I couldn't tell whether they were on—there were no stakes; I could not tell whether they were on that particular piece of property or on an adjoining piece of property, but they were hired by Mr. Butler and Mr.

(Testimony of Joseph P. McDonnell.)

Maxwell, I believe. Absolutely I know that of my own knowledge. I absolutely know that we hired men there, but when we went out to see it we did not have any hired men at that time. There was men on the ground. I don't know what they were doing; they were watchmen, I believe. I believe they were just there as watchmen. They were not armed that I know of. There was considerable trouble about jumping in that vicinity at that time, and a great many people had men stationed on the land simply to guard it and keep off jumpers. After my visit there about September 17th to 20th, I used to go over there every month or six weeks. I would say I was there six weeks, I guess, after the 20th of September. I believe there was a cabin erected on the property some time in October. I believe Mr. Maxwell put it up; I am not positive, though. I did not have anything to do with the work of building the cabin. Mr. Maxwell had complete charge of the work. Personally I would not want to fix any time when the cabin was put up. [491]

I paid A. H. Butler \$1,500 by check on November 7th. The check was on T. R. Finley. That was half of the \$3,000 for the lease. I don't know whether that was his commission or whether that was to go to the British-American Oil Company. I don't know what became of that memorandum. It was prepared in the office of the National Supply Company. I do not remember whether it was a type-written agreement. I think it was something we sketched up among ourselves. I don't know whether

(Testimony of Joseph P. McDonnell.)

there was a copy made of it. I never had it in my possession. It was taken over by Mr. Maxwell, Mr. Maxwell and I did not afterwards organize a company. We sold 40 acres of the lease—we gave 40 acres to the Dominion Oil Company to operate the 80 and take up our obligation on the 80. We were obliged by our contract of November 20, 1909, to drill wells on the south 80 acres of this northwest quarter. We then subleased 40 acres to the Dominion Oil Company, and I believe they were the people who actually spudded in the first well. Mr. Maxwell and I never did spud in a well there. We afterwards sold the north 40, or subleased the north 40 to the Bankline Oil Company. Neither Mr. Maxwell nor I, nor anyone associated with me in this lease of November 20, 1909, ever did any actual development upon the property. We never did any actual drilling on this property.

Q. You said you asked somebody—Well, did you and your associate, Mr. Maxwell, ever do any actual development of any sort? A. Yes, sir; we have.

Q. What did you do?

A. Well, we operated in Santa Maria.

Q. I mean on this particular quarter.

A. Actual operations?

Q. Yes.

A. No, not drilling operations, we didn't. [492]

Q. Well, anything looking to drilling?

A. Oh, yes.

Q. What did you do?

(Testimony of Joseph P. McDonnell.)

A. Mr. Maxwell went ahead and got a rig up and looked after the preliminaries.

We built the rig. I made some arrangements, had some talk with a representative of the California Supply Company. That was the company I was working for. Mr. Frazier was the man I made these arrangements with. He was one of our sub-managers, under my direction. I would say I had this conversation with him just at the time we took this lease. I told Mr. Frazier we were going to operate it and we [493] wanted an outfit. I believe part of this outfit was hauled out to the land. I couldn't tell you when it was done. Personally we did not purchase this complete outfit that I asked Mr. Frazier to set aside.

Q. Personally that contract or that arrangement was never consummated then?

A. No, the material was purchased.

Q. Well, was it to your knowledge purchased by you and Mr. Maxwell?

A. Not to our knowledge, but it was purchased by Mr. Maxwell, I know.

Eventually, practically all of the material ordered at that time was purchased. No one can tell what they want or what they need in an outfit until they get started. At the time I talked to Mr. Frazier we knew the essential parts we needed. We specified all the leading parts we needed. We told Mr. Frazier we wanted a complete outfit. Mr. Maxwell and I did not afterwards pay for that outfit ourselves. We did not pay for any part of it.

(Testimony of Joseph P. McDonnell.)

Q. You said in your direct examination, in answer to Mr. Weil's question, that this contract of November 20, 1909, was changed a dozen different times. What did you mean by that, and of what did the changes consist?

A. Well, I think we had a clause put in that we would not have to operate if oil got below 30 cents a barrel; and I think there was a number of little clauses that is in all those leases; and every time we would want a change, Mr. McDonald would have to get these people together, and they always agreed on the changes.

Q. Now, would you sign up the contract and then want to change it, or did you do that before it was finally signed? [494]

A. Before it was finally signed, we got the lease to our—

Q. To your liking? A. To our liking, yes.

Q. When you would agree on one clause, you would say, "We want something else in here, want some other change," and McDonald would have to see his people again and agree upon that change?

A. Yes.

Q. And so that went on a dozen times, as you say?

A. Well, there were a number of changes, yes.

Redirect Examination.

(By Mr. WEIL.)

Mr. Frazier and I both understood what was meant by a complete outfit. That was a generally understood term in the field.

Testimony of William O. Maxwell, for Defendants.

WILLIAM O. MAXWELL, a witness called in behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. WEIL.)

My name is William O. Maxwell. I reside in Los Angeles. I am a consulting engineer. During the year 1909 I was in the employ of the Associated Oil Company, in the Land Department, until the latter part of the year; I think I resigned in either the latter part of August or early in September of that year. The Associated Oil Company is interested in the oil business. I have been associated in various capacities in connection with the oil business since April, 1902. I know the northwest quarter of Section 15, 31-22, sometimes known as the Dominion property. I had business dealings with that property. To the best of my recollection, sometime during September, 1909, Mr. McDonnell and [495] myself went from Santa Maria to McKittrick, with the intention of getting some properties to develop for ourselves and associates in Santa Maria. We were assured at the time we went over by these associates of ours that they would assist us in financing anything in reason that we could get, and as we had been in numerous deals with these same people, their assurance in that matter was sufficient for us. So we looked over the ground generally and had probably three or four propositions under consideration.

(Testimony of William O. Maxwell.)

The best of these, to our notion, was the one now known as the Dominion Oil Company. We met A. H. Butler, Jr., and C. E. Frazier in McKittrick at that time. Mr. Frazier brought to our attention the fact that Butler was offering a lease on this particular property, and I think introduced us to Butler. We looked over the property, and I am not quite certain we went out onto it itself, but we could get a general idea from the map as to the desirability of the location. And we concluded if we could get a satisfactory deal on that particular property, we would like to have it, and we thought we could recommend it for development purposes. So we entered into a preliminary agreement with A. H. Butler, Jr. This agreement was drawn up between Butler and McDonnell. The principal part of it was that we were to assume all indebtedness—I have no idea where that agreement is. I have not seen that agreement since I turned over the affairs of the Dominion Oil Company to Mr. Brynes in 1910. I am under the impression that at that time it was with the general records of the company. We agreed to begin operations for the development of the property immediately, and to pay a bonus of \$3,000 for an eighth royalty lease on this particular 80 acres. To the best of my recollection, those were the principal features of this preliminary agreement. [496]. As soon as this was executed, or as soon as it was signed by Mr. Butler and Mr. McDonnell, McDonnell left for Los Angeles to take up the matter of getting the lease with the British-American people ratified by

(Testimony of William O. Maxwell.)

them, all of the points of which would be to the satisfaction of both parties. At the time that we executed this preliminary agreement, within a day or so afterwards, McDonnell left for Los Angeles to take up the matter of getting the agreement ratified and a permanent lease drawn up with the British-American people; and I proceeded to do what I could about getting the development work started. That was about the 20th of September. There was some rig lumber on the property when this arrangement was made. It was not quite a complete rig; somewhere in the neighborhood of fifteen to twenty thousand feet, I would imagine. The first thing we did was to place an order with the California National Supply Company at McKittrick for a complete drilling outfit and equipment, which would consist of rig-irons, boiler, engine, cordage, casing and small tools. And then we took up with several parties around McKittrick the question of getting rig-builders for building the rig. All of the rig-builders were evidently very busy at that time, and it was almost impossible to get anybody right away. I saw several parties personally, and had my friends all looking for rig builders. I also took up with the Santa Fe and the Stratton Water Company the question of getting water for development of the property. The only way I have of fixing this date is that as soon as we entered into this preliminary agreement I started to get all lines moving to the best of my ability, to get the development work started, and just what dates I did these certain things I am unable to state at the

(Testimony of William O. Maxwell.)

present time. According to my [497] best recollection, the written agreement was made the 20th of September. From that time I used all of my efforts toward getting this development work started. As I stated before, I attended to all these various matters that could be attended to, and did that immediately after getting this preliminary agreement. As I stated before, it was very difficult to get supplies, rig builders, water, and other essentials for the work. I was not doing any other work just at that time. I was devoting my entire attention to this project. I was living in McKittrick at that time. I would go down to the property every three or four days, possibly. There was not anything that I could do there in particular. I saw Mr. Levet of the Santa Fe Water Company. I asked Mr. Levet if we could get immediate water connection.

Mr. HALL.—I object to any testimony as to conversations with Mr. Levet, unless it is shown it was prior to September 27th.

The COURT.—Oh, I think it is proper to show what they did even after that date, if it is a continuous operation, as showing their good faith. Go ahead.

Mr. HALL.—Exception.

I asked Mr. Levet how soon we could connect up with his company for water, and he advised me that he had a long waiting list then, and that he could not assure me of anything under 60 or 90 days. I saw somebody in connection with the Stratton Water Company, I don't remember who it was now, and

(Testimony of William O. Maxwell.)

they advised me that they had all the business they could handle and would not be in a position to take on any new business for some time. I saw Mr. Van Slyke, representing what was known as the Yancey interests at the time, in regard to getting water through his line, which they either were laying or had already laid to Crocker Springs; and he [498], told me that they would not have enough water from that source for their own purposes, he didn't think, but if there was any way he could assist me with some water, he would do so. There were no other available sources of supply of water in the field at that time to my knowledge. The rig material was somewhat slow in being delivered, the machinery and other supplies which were ordered from the California National Supply Company. There was a large amount of development work being done in the field at that time, and they were always short on certain articles. But the delivery of the machinery was not the cause of any delay of our operation, I don't think. The principal delay and trouble was in getting rig builders and getting assurance of any water supply.

Q. Where did you ultimately get the water for drilling this well?

A. We succeeded in making arrangements with the Santa Fe to give preference—that is, some of the other parties, it appeared, were not in so much of a hurry to get started, and they allowed us to come around them, and by connecting up with the line of the Union Oil Company, running from some point I

(Testimony of William O. Maxwell.)

think in section 16 to their Sheridan lease on section 10, we were able to get water sooner than we expected to according to our first investigations in the matter. I was on rather friendly terms with the people of the Union Oil Company at the time, and I saw Mr. F. F. Hill, their general superintendent, and asked him if they would have any objection to us connecting into their Sheridan line, and he said he didn't think so, but he advised me to see Mr. Becker, who was their local representative, which I did, and Mr. Becker said it would be entirely satisfactory to him. So we proceeded to connect up with this line, and had water there by the [499] time the derrick was erected.

I do not think the Union had completed their line to the Sheridan lease at the time we cut into it. We got water out of that line before they did. There was not a sufficient amount of lumber on there for a complete derrick when I first went there. I took that matter up with Butler, and he assured me he was doing everything he could to get the shortage attended to. It is my recollection that the principal shortage was in what we call leg stuff. We could not have gone ahead and built the derrick even if we had had rig-builders. The only thing we could have done would have been to frame the ground timbers and cut up such lumber as we had there and get it ready for running the derrick. We did that as soon as we could get the men to do it.

Q. Now, when you first made this arrangement, which your recollection is was on the 20th of Septem-

(Testimony of William O. Maxwell.)

ber, did you do anything on the land itself from that time forward in reference to engaging any men, or anything of that sort?

A. Butler had some men engaged at the time, but we assumed the expense of those men, from the time of our taking over the property, or the signing of the preliminary agreement.

Q. Where were those men?

A. Those men were staying on the property.

Q. And what were they doing?

A. They were not apparently doing much of anything up until the time I went there, and I instructed them to clean up as much as they could around the place, and cut the sagebrush, and do a little pick and shovel work on the roads in there and get them repaired so that we could haul over them.

Q. And did they do that? [500]

A. They did.

Q. Was there any other work done on there? To refresh your recollection, was there a dam and a sump-hole built on there, under your instructions?

A. I don't think so.

After this south 40 acres was disposed of to the Dominion Oil Company, I became manager of it. I continued as manager of the Dominion until the spring of 1910, I think the first of March. It was under my supervision that this well was drilled. We first struck oil in this well either on Christmas Eve or Christmas Day of 1909. My recollection is rather hazy as to what depth that was, but it was somewhere in the vicinity of 500 feet, if I remember

(Testimony of William O. Maxwell.)

correctly. The well was afterwards drilled to about twenty-one or twenty-two hundred feet. They got no oil below the first strata. That is the first oil that we ran into, in the vicinity of 500 feet, and I think we had 110 feet of that sand. After we got through that, we got nothing more. We drilled to a depth of 2,100 and got nothing, and then the well went back and produced. We backed up and pulled, I think, the 8-inch casing out, and cemented, put in a cement plug, below the bottom of the oil sand—I think it was a cement plug, I am not certain, but I know that we had some deep water that we had to dispose of, which we did. The plugging of the well and backing up was done after I left. I think that well is still producing. I have not seen that well in probably five or six months. I would not be certain that it was producing the last time I saw it. They had quite a lot of trouble with it in the last two or three years, casing trouble. It did produce for a number of years to my knowledge. My impression is that up to the time I left they spent about eighteen or twenty thousand dollars in drilling that well. That was up to the middle of March, 1910. [501]

Cross-examination.

(By Mr. HALL.)

I am not exactly what you call a petroleum engineer. I have had a great deal of experience along the line of drilling wells and handling oil properties; I devoted practically all of my attention to that for the last 16 years. I worked at the theoretical end

(Testimony of William O. Maxwell.)

and at the practical end of it, both. This territory up on Section 15 proved to be shallow. At the time Mr. McDonnell and I went to see Section 15, I don't remember how deep the Yancey crowd had drilled their well on the southwest quarter; I am not sure whether they were into the oil at that time or not. When I first saw them there in September, 1909, I would not be positive, but I rather think they had some oil showing. My relations with the Barnesdale and Yancey people were friendly. At the time I negotiated for this land, I think the nearest development was at Bear Creek. At the time I went to make negotiations with McDonnell we had knowledge of the wells of the Majestic, the Bear Creek and the Fenton. We did not really think it would be shallow, because everybody in that district at that time was under the impression that there were two oil zones; that the first of them would probably be shallow, but the second would be anywhere from 2,000 to possibly 3,000 feet, and that the second would be the gusher sand; which theory afterward proved to be entirely out of line with the actual conditions. The gusher sand never materialized in that vicinity. That quarter proved to be comparatively easy to drill. We didn't have any trouble getting through the sands in the first well. There was no delay whatever about drilling the first well; after we got started we had no delays. Mr. Frazier introduced me to Mr. Butler. Mr. Butler told me that [502] he was the agent for the British-American Oil Company in the transaction.

(Testimony of William O. Maxwell.)

Q. Did he say anything to you about the North Midway Oil Company?

A. I don't remember that he specified definitely either one or the other; he stated that he was agent for the parties who had control of the land.

He referred us to W. Z. McDonald, M. Z. Elliott, and L. W. Andrews as the principal ones in the organization. I knew Mr. Andrews by reputation at that time. The substance of this memorandum was, to the best of my recollection, a simple agreement stating that in consideration of \$3,000 cash we would be furnished with a one-eighth royalty 20-year lease on this particular property. It seems to me that we made some kind of a payment at that time, but I wouldn't be positive in that matter. If it was made it would be either by personal check of Mr. McDonnell or myself, one or the other. There is nothing that I can recall to refresh my memory as to whether we did or did not make such a payment at that time; I tried to look the matter up and I didn't have any success. I haven't found anything in my books or papers that indicate that I passed a check at that time for that purpose. My recollection is that the memorandum provided that some time in the future the people whom Mr. Butler was then representing would make us a lease of the south half of the northwest quarter of 15, and we would pay a bonus of \$3,000 cash and one-eighth royalty of all oil. Mr. McDonnell carried on the first negotiations with the people who were supposed to have the right to lease this land, and afterwards called me in. I have no

(Testimony of William O. Maxwell.)

way of placing the date when I was called in on those negotiations. It was possibly a month after the preliminary [503] agreement. It was some time after I was called into the consultation before the lease was finally consummated and signed. I don't really know how long after November 20 it was before we assigned our lease over to the Dominion Oil Company. I can't really give a good intelligent guess as to the time. The Dominion Oil Company was the one that assumed all the obligation in the matter and spudded in the well. I think that well was spudded in about the first week in December, 1909. When I first met Mr. Butler in McKittrick I went out to see this quarter at that time. Mr. McDonnell, Mr. McKittrick and I went out together. There were some men on the property at the time.

Q. What were they doing at that time?

A. They didn't appear to be doing much of anything in the way of work; they didn't seem to have anything to work with.

Q. Was there any cabin or any shelter there for them at that time? A. I think there was a tent.

Q. A tent there? A. I think so.

Q. How many men were there?

A. There were either four or six; I am not certain now.

Q. And they were not working at any particular job that you saw them doing that would lead to the development of the property, were they?

A. Not just at that time.

Q. Mr. McDonnell told you that they were his

(Testimony of William O. Maxwell.)

men; he had them employed out there at that time?

A. Mr. Butler.

Q. Mr. Butler, I mean. A. Yes. [504]

Q. Did he tell you what he had them out there for?

A. He told me he had them there to act as watchmen, as there was some danger of jumpers in the country, and also as soon as they could be supplied with anything to work with they would start to work.

We took over the control of this 80 acres right away. We took it over as soon as the preliminary agreement was signed, and that was prior to that time that I was out there. The men were kept there by me. There were either four or six of them; I could not be positive. I gave them some instructions as to what to do. I did not stay there to see that they carried out those instructions. I would go back there sometimes every day, and sometimes it would be three or four days before I could get out. The lumber that was there was not sufficient to build a rig when I got there. I asked Mr. Butler what he had done in regard to filling the requirements, and he said that the order was placed for the lumber with the King Lumber Company, and they had a shortage in those particular items at that time. I didn't go to see the King Lumber Company myself. I took Mr. Butler's word for it. I made no investigation directly with the King Lumber Company.

Q. You say that the drilling material,—that is, the complete outfit,—did not delay you any at all in your drilling? A. No.

(Testimony of William O. Maxwell.)

Q. When you got ready up to that point, you could go right ahead? A. Yes.

I spoke to Mr. Van Slyke in regard to Mr. Henry going out and working on the property. I can't say positively when it was [505] I spoke to Mr. Van Slyke, but it was within two or three days after the beginning of our negotiations. Mr. Henry did not get out there to build this cabin until the latter part of November. I personally paid part of this \$3,000 that was finally paid to the British-American Oil Company. It was afterwards refunded to me. That was paid to A. H. Butler, Jr. Within a week after the time of the beginning of our negotiations, I spoke to Mr. Levet about the water situation. It was possibly a month after that that I spoke to Mr. Hill of the Union Oil Company about water. As we could not get water from the Santa Fe, it would not be of any particular advantage to us to see the Union people. We were on friendly terms with the Santa Fe people during all of this time. The Union line was not laid across this northwest quarter when we took it over from Butler. I think they completed that line in November. We did not make any effort to lay any water line to the property from any place prior to the time the Union Company's line was laid, because we had no plant we could lay from. We did not try to get any water through the tank-car system. There was some drilling done out there during that time with water from tanks. I did not make any application to the Bakersfield people to ship our water out in tanks. The only recollection

(Testimony of William O. Maxwell.)

I have of making an application for water was to the Santa Fe, the Stratton and the Union. I did not investigate the question of drilling wells up at Crocker Springs and trying to get water from that point. I knew Mr. Yancey was getting water from there. I made no attempt to bring the water down from that point. Mr. Yancey informed me that they had all of the water rights down at Crocker Springs. Through Mr. Van Slyke I applied to Mr. Yancey for authority to bring the water down there. We never applied for [506] the privilege of drilling wells and putting in any pipe-lines. We applied for the privilege of taking water from their system. We did not apply for the right to dig wells and bring the water down from there independently of their system.

Q. These men that you set to work out there, was that essential to the development of the property?

A. It was essential that the men be there to do what they could, to push the work along as fast as they could. It probably would not be considered essential in the light of what we know at present, to have them there, but we thought we had better have them there because men were scarce and if we could get men we had better get them.

Q. Were they there for the purpose of keeping people from jumping the property? Did you have that in view?

A. That was always a possibility.

Q. You thought at that time that would be protection to your rights there to keep those men there,

(Testimony of William O. Maxwell.)

so if anybody came along to jump your land they would be there to prevent them from doing it?

A. It showed our possession of the property.

After we took this land there was some attempt to jump the property, we had some little argument a time or two, but nothing of any importance. No one was killed, but people came on there to take possession of it if they could. Mr. Cunningham came on, and we probably had some influence with him. [507]

Testimony of F. J. Burns, for Defendants.

F. J. BURNS, a witness called in behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. WEIL.)

My name is F. J. Burns. I reside at McKittrick, California. I am field manager of the Dominion Oil Company. I have been field manager of that company since March, 1910. When I became manager of the Dominion Oil Company all of the records of the company, so far as I knew them to exist, were placed in my custody. A little after that time I became a justice of the peace. I finally took the records of the Dominion Oil Company into the new hotel, a brick hotel that had been built at McKittrick; I had them up at my office there. That was my regular justice of the peace office and the one which I occupied as manager of the Dominion. That office was burned up in May or June, 1914. The building was completely destroyed, and all of

(Testimony of F. J. Burns.)

the records in it burned up. We did not recover any of those records at all except those that happened to be left out on the lease. I have been in the oil business sixteen years. I was working for the Brookshire Oil Company prior to the time I worked for the Dominion Oil Company. In September and October, 1909, I was working on Section 24, 31-22, a little over two miles from the property in question. During September and October and November I went over to the property in question. I knew the parties who were interested in that property. They were A. H. Butler, Jr., and C. Frazier. I was there probably four or five times during September and October. The first time I went over I think Mr. Butler came in and wanted to take some men and some supplies, and I had a touring car there that I had driven over [508] from Santa Maria, and he asked me to take him out with the supplies and these men, and I took him out. I do not remember about when that was. It was in the early part of September, I believe. I was over that property and past that property during September and October, because the road goes through the Santa Fe there, goes through that way, and sometimes we would go that way. I saw some lumber on the property when I went on first. That was later than the first of September, though. It was during the month of September. I do not remember whether I was on the property between that visit and the time when the rig was completed. They got oil on that property on Christmas Eve or Christmas Day of 1909.

(Testimony of F. J. Burns.)

Roughly speaking, I should say the Dominion Oil Company spent seventy-five to one hundred thousand dollars on that property. They have drilled four wells. The other improvements consist of a water-tank, two 1500-barrel storage tanks, numerous pipe-lines, part of the material for another well purchased, electric motors installed in all four wells, sump-holes dug, roads made, four buildings put up, one of which burned down and had to be replaced, tool-house and blacksmith-shop, and garage; all necessary things for a permanent camp are used there. Our monthly production there is about 6,600 barrels. These wells are producing. Number one well collapsed; she is only producing about 10 barrels a day part of the time.

I remember a representative or special agent of the Land Office or Department of Justice coming on our land to talk to me about development work there. That was about two years ago, I think.

Cross-examination.

(By Mr. HALL.) [509]

These wells have been producing right along since the first well came in in December, 1909. To-day it is the intention of the Company to continue producing. Our No. 1 collapsed. This was the second time it collapsed. The sand heaves in and squeezes the casing together, and you can't get your tubing down to the bottom and don't get a proper suction for the oil. We have to keep cleaning it all the time. There is no water in those holes up there. When I first went over to the property with Mr. Butler in

(Testimony of F. J. Burns.)

September, 1909, I found some rig timber on the ground. There were men there at the time; three or four came out to meet us when we took these other men there. I don't know whether there were any buildings erected. I know there was a little lean-to, but I don't know whether there was a building on it or not. The men were camping under this lean-to. I heard quite a little about the trouble with jumpers around in that vicinity; they tried to jump the Brookshire, too. These men that we took out there would act as guards as well, I suppose, as other things we wanted them to do. There was no derrick or drilling going on at that time. I was not familiar with the property until about December I got interested and used to go out with Mr. Maxwell. That was when the drilling commenced.

Mr. WEIL.—We offer the following stipulation:

“IT IS STIPULATED between the counsel for plaintiff and counsel for defendants that Dr. W. J. Davis, who is now in Arizona, would, if present, testify as a witness for defendants:

“That at the time arrangements were made in December, 1907, for locating the lands in question in this case under the mining location known as Zee No. 8, and for locating other lands for and on behalf of the groups and the association referred to in the evidence of Roy Jones and others, the M. Z. Elliott group consisted of M. Z. Elliott and Dr. W. J. Davis, and that they were interested equally and continued to be interested equally in said transaction and locations, and that M. Z. Elliott represented this group

in what was done [510] with regard to placing the title of the property in the hands of trustees and conveying the same to British-American Oil Company, and that he held the stock of British-American Oil Company, $\frac{1}{2}$ thereof belonging to himself and the other $\frac{1}{2}$ to W. J. Davis, until sometime in 1911, when, at the request of Dr. W. J. Davis, the $\frac{1}{2}$ of said stock owned by him was transferred to the wife of Dr. W. J. Davis, with the exception of a few shares, which were transferred to said Davis.

“IT IS STIPULATED that the foregoing shall be treated as though testified to and as the evidence of said Dr. W. J. Davis.”

Mr. WEIL.—I offer here the proof of labor that was filed on behalf of the British-American Oil Company on the 6th day of January, 1910, the proof of annual assessment labor, which appears had been recorded on January 7, 1910, in book 75 of mining records at page 107 in the office of the county recorder of the County of Kern, and ask that it be marked Defendants' Exhibit “E.”

Mr. HALL.—We want to object to this, may it please your Honor, on the ground that it is a self-serving statement; that it includes therein conclusions instead of a detailed statement of the facts, and is incompetent, irrelevant and immaterial.

The COURT.—Well, it will be admitted for whatever it is worth.

Defendants' Exhibit “E” is as follows, to wit:

Defendants' Exhibit "E."**"PROOF OF LABOR.**

"State of California,

"County of Los Angeles,—ss.

"BEFORE ME, THE SUBSCRIBER, Personally appeared M. Z. Elliott President of British-American Oil Company who being duly sworn, says that at least Six hundred Dollars worth of labor or improvements, consisting of lumber for derrick and cabins. Said derrick and cabin were purchased and placed on the ground prior to the 23rd day of September, 1909, and since which time barring delays occasioned by the inability of the King Lumber Company to furnish the balance of lumber required for the derrick, the work has proceeded without intermission to the discovery of oil bearing sand at a depth of approximately 420 feet. The cost of the work done and performed on the said north west quarter of Section 15, Township 31, South Range 22 East, Mt. D. B. & M. [511] during the year 1909 is in excess of Seven Thousand Dollars (\$7,000.00) performed or made upon the north west quarter of Section 15, Township 31 South, Range 22 East Mt. D. B. & M. . . . Mining Claim, situated in North Midway or McKittrick Mining District, County of Kern and state of California, during the year ending December 31st, 1909. Such expenditure was made for the benefit of British-American Oil Company

owner of said claim, for the purpose of holding said claim.

Signature, (Signed) M. Z. ELLIOTT.

Subscribed and sworn to before me, this 6th day of January, 1910.

(Seal of Notary Public.)

(Signed) ARMA B. DESSAU,
Notary Public in and for the County of Los Angeles,
State of California.

No. 50. PROOF OF LABOR.

(On back thereof appears the following:)

PROOF OF LABOR. Filed, ———, 19—. Recorded at Request of M. Z. Elliott, Jan. 7, 1910, at 40 min. past 8 A. M., in Book 75 of Min. Recs., page 107, Kern County Records. (Signed) Chas. A. Lee, 2-4-50." [512]

Mr. WEIL.—It is admitted that if John Barneson, president of the Bankline Oil Company, was called as a witness in this case on behalf of the Bankline Oil Company, and individually if called as a witness on his own behalf as to the north 80, that he would testify as alleged in the answer, paragraph 4, of the affirmative defense, as amended.

Mr. HALL.—Yes. [513]

Mr. PRINGLE.—I offer and read in evidence the lease that was made between Joseph McDonnell and Dominion Oil Company, dated November 21, 1909, as follows, to wit:

“THIS AGREEMENT made this 21st day of November, 1909, between JOSEPH McDONNELL of Santa Maria, California, first party, and DOMIN-

ION OIL COMPANY, a Corporation, second party:

“WITNESSETH: That whereas, first party holds a lease from North Midway Oil Company covering the S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of Section 15, Township 31 South, Range 22 East, M. D. B. & M., and

“Whereas, second party desires to secure sublease of the S. $\frac{1}{2}$ of above described property from first party;

“Now, therefore, in consideration of the rents or royalties to be paid to first party by second party and agreements herein contained to be kept and performed by second party, the first party hereby subleases and sublets unto second party all of the S. $\frac{1}{2}$ of the S. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of Section 15, township 31 South, Range 22 East, M. D. B. & M., in Kern County, California, for the period of 20 years from the 27th day of September, 1909, together with the right to operate, mine, dig, excavate, tunnel, drill for and otherwise develop, collect and obtain, all kinds of crude petroleum, oil, asphaltum, tar, gas and other hydro carbon substances, in, upon and under said tract of land, together also with the right to take, sever, remove, market and dispose of, all and singular said oil and other substances (subject to the payment of the royalty hereinafter provided) out of, from and away from said tract of land; together also with the right to enter upon said property with any and all proper means and appliances and thereon to erect, operate and maintain any and all tanks, rigs, derricks, boilers, engines, jacks, pipelines and other buildings and structures necessary or desirable for use by second party in connection

with its operations for the development and securing of oil from said premises.

“Second party agrees and it is a condition hereof, that it shall take possession of said premises on the date hereof, and that from and after the date hereof, it shall and will at its own expense, take all requisite steps and proceedings to secure and maintain the possession of said property at all times. It is further a condition hereof and second party agrees, that it shall and will, within 5 days from date hereof, commence work on said premises preparatory to drilling and operating for oil thereon and to that end that it will forthwith within five days from the date hereof, build a house on said premises and forthwith thereafter, and as soon as possible, secure all necessary timbers and materials, tools, implements, rigs and equipment for erection of derrick on said premises and for drilling for oil thereon, and as soon as the lumber therefor can be laid on the ground, it will commence the building of a derrick and thereafter, with diligence, will prosecute the construction of the derrick [514] and drilling rig and thereafter will prosecute the work of drilling a well for oil on said premises with diligence to completion thereof.

“Second party further agrees that in any event it shall and will, prior to the 25th day of December, 1909, perform labor on said property in the development thereof of the value of at least \$200.00 and that it shall and will, at its own cost and expense, make all necessary affidavits and proofs of labor covering all of said Northwest one-quarter of Section 15 (in

the name of the British-American Oil Company) filing the same with the proper officials during the year 1909, and that it shall and will perform a similar amount of labor and file similar affidavits each succeeding year thereafter until patents have been obtained on said property.

“Said party further agrees upon the development of minerals in sufficient quantity to enable the acquirements of a United States Mineral Patent, it shall and will at its own cost and expense, take all necessary steps to secure United States Mineral Patent on said entire Northwest one-quarter of said Section 15, the same to be for the benefit of both parties hereto and the British-American Oil Company, and shall be in the name of said British-American Oil Company. First party to repay to second party their proportional amount per acre required to be paid to secure patent on the N. $\frac{1}{2}$ of the S. $\frac{1}{2}$ of said NW. $\frac{1}{4}$ of said Section 15. Whenever a patent shall have been secured for said property or whenever oil or other minerals shall have been found upon said property in paying quantities, said S. $\frac{1}{2}$ of said S. $\frac{1}{2}$ of said NW. $\frac{1}{4}$ of Section 15 hereinabove described from such time for the balance of said terms shall be subject to all the terms of this lease.

“Second party agrees that it shall and will prosecute the work of drilling said well with diligence until the same shall have been drilled to depth of at least 2,000 feet, unless oil be found in said well in paying quantities at a less depth.

“Second party further agrees and it is a condition hereof that from the time it commences drill-

ing operations on said property (which shall not be later than December 25, 1909), it shall and will thereafter actively and diligently prosecute the work of developing said property and to that end it shall and will drill to completion at least one well on said property during each and every year for the first ten years of the term hereof, making ten wells in all. It being understood, however, that in case it is unable to drill one well in any year by the diligent operation of one string of drilling tools during said entire year, that, notwithstanding said company's obligation in that behalf shall be satisfied, in case during each of said years it shall continuously and diligently operate for oil with one string of drilling tools during such year or years. Whenever second party shall have found oil in any well in paying quantities the same shall be deemed to be and shall be counted as a complete well for all the purposes of this agreement and whenever second party shall have sunk a well to the depth [515] of 2000 feet although oil be not discovered in paying quantities, same shall be deemed to be and counted as a completed well for the purposes of this agreement. A well producing 10 barrels of oil per day for each of 30 consecutive days shall be deemed to be a well which produces oil in paying quantities. It is understood, however, that second party shall have the right to drill a well to such depth greater than 2000 feet or as many more than ten wells as it desires.

“It is further agreed, that from and after the completion of each well in which oil shall have been found in quantities sufficient to pay to pump, second party

shall pump or otherwise secure and save oil therefrom with diligence at all times, as long as such well produces oil in quantities sufficient to pay to pump, or otherwise secure and save. Second party shall have the right to pump any and all producing wells as long as the same produce oil in paying quantities and such rights shall not be terminated by the expiration of said term of twenty years.

“Second party shall pay on behalf of first party to North Midway Oil Co., and North Midway Oil Co. shall receive as rent or royalty for said property the equal $\frac{1}{8}$ of all oil produced or secured and saved from said property at any and all times during the term of this lease, and on the first day of each and every month, second party shall pay and deliver to North Midway Oil Co. as said rent or royalty, the equal one-eighth of the total amount of oil produced or otherwise secured and saved from said property during the preceding calendar month, after deduction has been made of oil used for fuel on said property, said oil to be delivered to, and be received by, North Midway Oil Co. at the storage tank of second party on the lease, or to be delivered into tanks of North Midway Oil Co. on the lease, or into pipe-line as elected by North Midway Oil Co., and in case of delivery into the pipe-line or into tanks of North Midway Oil Co., second party shall, at its own cost and expense, pump said oil into said tanks of North Midway Oil Co., or into the receiving station of the Pipe Line Company, either from pipe-line of second party (for use of which second party will make no

charge), or, if second party has no pipe line connections with the pipe line or receiving station of the Pipe Line Company, then from pipe line which may be constructed by North Midway Oil Co. for the use of which the North Midway Oil Company may have arranged, North Midway Oil Company shall have the right to erect storage tanks at any convenient location on said leased premises which will not interfere with operations or structures of second party already erected or commenced. Second party shall furnish to North Midway Oil Company free of charge, storage for one month's royalty due first party after the day the same is payable hereunder.

“North Midway Oil Company shall have the right to sell its royalty oil in connection with the sale by second party of any of its oil, and to that end second party shall advise North Midway Oil Co. of any and all [516] contracts which it has the opportunity to make for the sale of its oil and thereupon North Midway Oil Co. shall have the right to have its oil included in such contract, and if so included, second party shall, on or before the 20th of each month, make settlement for and pay North Midway Oil Co. in cash for all of its royalty oil produced during the preceding calendar month for which payment has been made.

“All wells shall be drilled in a thoroughly workmanlike manner and all water encountered in drilling shall be cased off by second party. Second party shall pay all taxes which may be levied on any and all property of any character placed upon said prem-

ises by it, together with seven-eighths of all taxes that may at any time be levied on the property.

“It is further agreed that if second party fails to commence work on said premises on or before November 25, 1909, or fails to perform at least Two hundred dollars worth of work on said premises before December 25, 1909, or fails to file said affidavits, or shall fail to prosecute the drilling of said first well with diligence to completion or shall fail to drill at least one well for each year of the first ten years of this lease, or to operate on said property constantly and diligently with one string of tools as herein provided, or shall fail to pump producing wells at all times with diligence as long as the same produce oil in quantities sufficient to secure and save, or in case second party shall fail to keep and perform any of its covenants herein contained, then or in either of said events, second party shall forfeit all its rights hereunder and at the option of first party, this lease shall absolutely cease and terminate. Provided, however, that second party shall not be in default for failure to promptly perform the work herein provided during such time as it may be delayed and prevented therefrom by acts of the elements, accidents and other causes entirely beyond its control. Provided further, that in case it shall have drilled and completed one or more wells, but thereafter fails to drill additional wells as herein provided, but otherwise keeps and performs the covenants and agreements herein contained on its part, that said forfeiture shall apply only to the right to drill additional wells, and that during the remainder

of said term, and as long as it shall comply with all other conditions of this lease, it shall have the right to continue pumping wells already drilled, and that the party of the first part agrees not to drill nearer than 300 feet to any well drilled and operated by second party. And second party shall not drill any well or wells more than 150 ft. to line of property held or retained by first party or his assigns after the first well.

“In case at any time the price at which oil can be sold at the wells drops to less than twenty-five cents (25¢) per barrel, the obligation in this lease on the part of second party to pump wells already drilled shall be suspended during such time, but not longer, as the price which can be secured for oil at the wells on said [517] territory remains less than twenty-five cents (25¢) per barrel. This provision shall not, however, in *any*, *affect* the obligation of second party to drill and operate as in this lease provided.

“First party shall have access to the premises and all wells and operations thereon and to the gauge and storage tanks of second party at all times, for the purpose of measuring and gauging the oil and securing general information concerning same. Second party shall keep full, correct and accurate account of all transactions respecting the production and storage of oil and receiving, transporting and sale of oil in all cases where the royalty oil is sold with oil of second party, all of which accounts shall at all times, during office hours, be open to inspection by first party or his representatives. At the terminattion of the right of second party hereunder

either in whole or in part, second party shall have the right to remove from said premises any and all property placed thereon by it excepting that sufficient casing be left in the oil wells to properly and efficiently shut off all water from entering the oil sand, and the balance of casing in all wells shall be sold to party of the first part at his option, for 75% of its market value.

“IT IS FURTHER AGREED, That the time for the commencement of work hereunder, the performance of assessment work, and filing affidavits as herein provided, the constant and diligent operations on said property with the respective equipment as herein provided, and the covenant to pump and otherwise operate wells and work with diligence as herein provided, are, and each thereof is, of the essence of this contract.

“This agreement to bind the successors and assigns of the respective parties hereto without express mention.

“IN WITNESS WHEREOF, on the day and year first above written, first party has hereunto set his hand and seal, and second party has caused its corporate name to be hereunto subscribed and its corporate seal affixed.

JOS. McDONNELL, (Seal)

First Party.

DOMINION OIL COMPANY,

By T. R. FINLEY,

President.”

(Seal) _____,

Secretary.

“State of California,
County of Santa Barbara,—ss.

“On this 12th day of November, in the year A. D. 1910, before me L. J. Morris, a Notary Public in and for said County of Santa Barbara, State of California, personally appeared Jos. McDonnell, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

“IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and the year in this certificate first above written.

L. J. MORRIS,
Notary Public in and for Santa Barbara County,
State of California.” [518]

Mr. PRINGLE.—Now, with that in the record, Mr. Hall, will you stipulate that the Dominion Oil Company became a holder for value of this property, paying over to McDonnell the \$3,000 that had been paid by McDonnell to the Midway Oil Company; also paid for the supplies, rig lumber, and so on, that was on the land, and took the property over for value and in good faith?

Mr. HALL.—We are willing to stipulate that if some officer of the company were called he would swear to that effect. I don't want to stipulate that that is the actual fact, but I will stipulate that if some designated officer of the company, the president or secretary, were called, he would swear to it.

Mr. PRINGLE.—At this time Mr. T. R. Finley, of Santa Maria, was the president of the company,

and you will stipulate that if he were called he would testify to that, and you will also stipulate that Mr. Finley, if he were called as a witness, would testify that he is an attorney practicing in the state of California?

Mr. HALL.—Whatever you state is the fact is all right. I am not familiar with the facts. [519]

The COURT.—That is a lease from McDonnell to the Bankline Company?

Mr. HALL.—To the Dominion Company, the south 40. They afterwards sold the south 40. McDonnell and Maxwell got the south 80 from the British-American or North Midway Oil Company.

The COURT.—Yes.

Mr. HALL.—And then they sold the south 40 to the Dominion Oil Company under this lease of November 20th, 1909.

The COURT.—What was the lease of September? Was that to Dickinson?

Mr. HALL.—That was a lease by the British-American Oil Company of the entire quarter to Dickinson on September 27, and then on September—or some time after that, we know not when, Dickinson assigned that lease to the North Midway Oil Company. Then the North Midway Oil Company made the lease of November 20th to McDonnell and Maxwell covering the south 80.

Mr. PRINGLE.—Covering the south 80, yes.

Mr. HALL.—Then on November 21st, Joseph McDonnell leases the south 40 to the Dominion Oil Company, and some time after that McDonnell and Max-

well, I assume, leased the north 40 of the south 80 to the Bankline Oil Company.

Mr. WEIL.—It really went to a company called the Maxwell Oil Company.

Mr. HALL.—From the Maxwell Oil Company.

Mr. HAMEL.—The upshot of the matter is that there were three operating lessees; that is, the Dominion Oil Company, the Bankline Oil Company, and Barneson & Walker, all claiming under sub-leases from the North Midway Oil Company.

Mr. HALL.—Yes. [520]

The COURT.—And the North Midway Oil Company claims now the lease to Dickinson?

Mr. HALL.—Yes.

Mr. WEIL.—The lease from the British-American.

Mr. PRINGLE.—Just to correct one statement of Mr. Hall's, the lease from the North Midway Oil Company was not to McDonnell and Maxwell. It was to McDonnell.

Mr. HALL.—Yes, that is correct.

Mr. PRINGLE.—And that covers the chain of title.

Mr. HALL.—Yes.

The COURT.—McDonnell and Maxwell are the gentlemen who claim to have made some contract with Butler in September.

Mr. HALL.—Yes; and that apparently eventuated in the contract of November 20th between the North Midway Oil Company and McDonnell.

Mr. HALL.—Mr. Weil, and Mr. Andrews, I be-

lieve the facts are that over that section 30 the British-American Oil Company, as an outcome of that suit of the British-American Oil Company against the Pioneer Midway Oil Company, sold their rights in section 30 to the Pioneer Midway Oil Company for the sum of \$3,500. May the record show that fact?

Mr. WEIL.—The suit was compromised.

Mr. HALL.—The suit was compromised and the British-American Oil Company surrendered its rights in section 30 to the Pioneer upon payment to the former of the sum of \$3,500.

Mr. PRINGLE.—If that is going in as evidence, Mr. Hall, I suppose you will stipulate subject to our objection to the materiality?

Mr. HALL.—Oh, yes. [521]

Mr. L. W. ANDREWS.—I think you are correct, that there was a suit and the suit was ultimately compromised in a quitclaim deed from the British-American to the Pioneer Midway. Now, as to the matter of compensation, consideration, or the like of that, I haven't it in mind.

Mr. HALL.—I think your books show you accepted \$3,500, and if I remember rightly, that was divided up partly to the company and partly to the counsel for the expenses of this litigation.

Mr. A. V. ANDREWS.—I don't know; I wasn't in the case.

Mr. HALL.—No; Judge Toland was, and a man named Smith.

Mr. L. W. ANDREWS.—Aside from the amount of the consideration, we are perfectly agreeable to those facts being known, if they are competent.

Mr. HALL.—The question of consideration, if you are in doubt about that—some substantial and valuable sum.

Mr. L. W. ANDREWS.—Yes. I think, as a matter of fact, that is the case, that the British-American received some substantial amount in compromise settlement of that suit, but as to the competency and materiality in this case, we want our objection.

Mr. HALL.—I haven't anything else except I wanted to offer a part of this Bankline statement, Mr. Weil, or may the record show, if it is agreeable to Mr. Weil, that between August, 1912, and up to March 1st, 1918, there was produced from the 40 acres of land claimed by the Bankline Oil Company, a total of 167,514.96 barrels of oil of the value of \$87,004.52. On the gas, from August, 1912, to March 1st, 1918, I take that, gas of the value of \$1,348.44—and Mr. Weil, I assume that it is a fact that you are willing to stipulate that there are wells producing oil, and have been ever since before the suit was brought and still are? [522]

Mr. WEIL.—Yes. The wells are now producing, all wells together, between 90 and 100 barrels per day.

Mr. HALL.—Yes; and there has been a production there right along since some time before the commencement of this suit; is that correct?

Mr. WEIL.—Yes. At the same time I wrote for this, I wrote for a statement on the Barneson and Walker piece, and they did not enclose it. I have wired for it, and I will have it in the morning, and I will hand it to the reporter, and it may go in the same way.

Mr. HALL.—Yes.

Mr. WEIL.—I would like to have this whole statement go in, if the Court please, and counsel.

Mr. HALL.—Subject to my objection as to its materiality.

Mr. WEIL.—The Bankline paid the Maxwell Oil Company for the unexpired portion of the lease, \$40,600. They have expended on the property in the way of improvements, pumping power plant, pipelines, electric lines, tanks, tools, buildings, warehouses, furniture and fixtures, and oil wells, a total of \$60,111.45. The cost of maintenance and operations, not including administration expenses, employee's compensation insurance, or amount paid on federal income tax, \$57,495.85. I will hand that in, and I will submit a similar statement to-morrow covering the north 80, and with counsel's permission, it may be deemed as being in evidence.

Mr. HALL.—One part of that statement refers to production.

(The statement referred to by Mr. Weil is in the words and figures as follows, to wit:) [523]

“BANKLINE OIL COMPANY.

STATEMENT OF PROPERTY N. $\frac{1}{2}$ OF S. $\frac{1}{2}$
OF NW. $\frac{1}{4}$, SECTION No. 15, T. 31 S., R. 22
E., M. D. B. & M.

MARCH 1, 1918.

AMOUNT PAID MAXWELL OIL COMPANY FOR UNEXPIRED PORTION OF LEASE. . . .	\$40,600.00
---	-------------

COST OF IMPROVEMENTS:

Pumping Power Plant.....	2,618.08
Pipe Lines	1,843.72
Electric Lines	613.55
Tanks	968.31
Tools	1,742.80
Buildings	1,574.98
Warehouse	342.60
Furniture & Fixtures.....	119.09
Oil Wells	50,288.32

Total cost of Improvements..... 60,111.45

Total Production—August,

1912, to March 1, 1918—

Barrels

Total Cash Value..... 87,004.52

Gas Sales—August, 1912, to

March 1, 1918

Cost of Operation—August,

1912, to March 1, 1918—

Maintenance and Operation. 40,627.69

Royalty

Taxes

Total Cost of Operation.... 57,495.85

DOES NOT INCLUDE ANY PORTION OF

Administration Expenses.

Employees' Compensation Insurance Expense.

Amount Paid on Federal Income Taxes.”

Mr. WEILL.—I have the data. I just got the data on the Barneson and Walker portion of it. The total production from the property since the pur-

chase of the lease by Barneson and Walker, to February 28, 1918, was 87,353.36 barrels. The amount received for the same was \$48,133.19.

Mr. HALL.—And may we at that point have the stipulation that ever since the wells first commenced to produce, which was some time anterior to the commencement of this action, the wells have been producing from that time until the present day?

Mr. WEIL.—Oh, yes. The cost of producing the above number [524] of barrels was \$20,469.75. The total amount of the investment is \$11,722.81, which includes \$7,000 purchase price of the lease.

ROY JONES, recalled.

Testimony of Roy Jones, for Defendants (Recalled).

Direct Examination.

(By Mr. WEIL.)

Q. Mr. Jones, after this little group that was organized into the North Midway Oil Company perfected their plans for the development of this land, who was your representative in the field?

A. The man that was continually in the field was Butler, and the man that went back and forth between our group and the field was Elliott.

The instructions given by our group to them were to press the work. We gave them instructions in reference to this Maxwell-McDonnell situation; the instructions were to help them *all could*, and co-operate, and push them and prod them all the time. We gave them instructions not to stop their own activities. They had instructions to go forward themselves in our behalf, in case Maxwell and McDonnell

(Testimony of Roy Jones.)

failed to go forward with the work. Our little group still retained the north 80 acres, the north half of that section. I think we disposed of it early in December to F. J. Carman.

Mr. WEIL.—That is our case.

Mr. HALL.—That is all of the Government's case.
[525]

Thereupon, by stipulation of counsel for the respective parties, the testimony of BENJAMIN F. LEVET, taken in the suit of United States versus North American Oil Consolidated et al., No. A.—48—In Equity, in the Southern District of California, was by stipulation of counsel, read into the record in this cause on behalf of the defendants, which said testimony is as follows:

Testimony of Benjamin F. Levet, for Defendants.

BENJAMIN F. LEVET, sworn as a witness on behalf of the defendants.

Direct Examination.

(By Mr. WHEELER.)

My name is Benjamin F. Levet. I reside in the city of Los Angeles. At the present time I am assistant engineer of the Santa Fe Railway Company. During the years 1908, 1909 and 1910 I was engineer of the oil and fuel department of the Chanslor-Canfield-Midway Oil Company, and the Petroleum Development Company, which were subsidiary companies of the Santa Fe. They were companies through which the Santa Fe Railway Company secured its oil or a portion of it at least for its trans-

(Testimony of Benjamin F. Levet.)

portation. I was familiar with the water situation so far as the said companies were concerned in the North Midway field in 1908-09-10.

During the year 1909 these companies obtained their water about five miles in a westerly direction from McKittrick. That was in the neighborhood of sixteen or seventeen miles from the town of Taft. The water was obtained by pumping from wells. In the beginning of 1909 we were pumping the water through a three-inch pipe-line and were supplying the water for the leased land—leased by the Chancellor-Canfield-Midway Oil Company. The water was used for domestic and drilling purposes. A six-inch pipe-line was started on December 26, 1908, and completed about the middle of 1909. We laid over forty miles of this six-inch pipe-line. It went to the original wells, west of McKittrick. We began pumping [526] from that line about the time we had the pipe-line constructed as far as Section 8, in Township 32-23. It was constructed before the 1st of June, 1909. It was in the early part of the year. After it was completed, we did not succeed in filling this six-inch pipe-line from our wells. We discovered that the well that we had depended upon that seemed to be furnishing, at the time it was completed, considerable water, was not going to be able to furnish the water, but we were really pumping the water down. At that time, I presume we succeeded in getting through the six-inch pipe-line about the same amount of water as we did through the three-inch pipe-line. We were engaged in drilling other

(Testimony of Benjamin F. Levet.)

wells in another location to remedy the deficiency. They were in the neighborhood of half a mile away, upon the same water properties of the Santa Fe. It was in April, 1909, we started on the first well at the lower or new plant. It was completed in May, 1909. When we completed that first well we drilled other wells in the same year. These wells were started and drilled as follows:

Well No. 6 started May 6, 1909; completed May 22, 1909.

Well No. 7 started June 17, 1909; completed July 27, 1909.

Well No. 8 started May 22, 1909; completed July 23, 1909.

Well No. 9 started August 9, 1909; completed August 20, 1909.

Well No. 10 started August 27, 1909; completed September 10, 1909.

Well No. 11 started September 16, 1909; completed September 28, 1909.

Well No. 12 started October 5, 1909; completed October 14, 1909.

Well No. 13 started May 23, 1909; completed June 28, 1911.

We were over a year in completing well No. 13 but that does not indicate that we were drilling it continuously. We went back afterwards for the purpose of indications and drilled it similar in depth to the balance of the wells so that we could see how the water stood,—the level of it. As we developed the water in these wells which I have enumerated we

(Testimony of Benjamin F. Levet.)

placed them on a pump to send the water along. In well No. 5, this had been dug by [527] hand, 6x8, to a depth of 22 feet, and a pump placed in the bottom thereof and we raised the water in that method. In well No. 6 in the same manner. Later on, when well No. 8 was completed, we secured a large lift pump, a Lutweiler pump, capable of lifting water from considerable depths and in desired quantities. Up until the time we secured the Lutweiler pump our water supply was not materially increased so far as our six-inch pipe-line was concerned. The Lutweiler pump was placed in operation on August 18, 1909.

At the time we obtained this Lutweiler pump the necessities of our own company had increased above what they were at the beginning of the year 1909 and we had demand for more water. Between the first day of January, 1909, and the time we got in this Lutweiler pump in August, 1909, our companies were doing very little drill work. After we got in the Lutweiler pump we began to increase our drilling work immediately. The absence of water had occasioned the delay in this increased amount of drilling by our companies. Between the first day of January, 1909, and the first day of October, 1909, our company did not have any extra or surplus water to sell to any new concerns for drilling purposes. Between the month of June and the month of October, 1909, there was but very little water procured from our company by any other company and that water was for domestic purposes.

(Testimony of Benjamin F. Levet.)

During that period of time there was always a demand for water. We had a good many applications but we needed the water ourselves. Our property was shut down. Our men had been fired and business was at a standstill. During that period of time it was generally known in that community that our company was increasing the size of its pipe-line and sinking more wells with a view to getting more water and installing heavier machinery. During that period of time we encouraged those applicants who came to us to [528] believe that they would be able as soon as our improvements or enlargements had been completed, to get water. When the first Lutweiler pump was installed we had other troubles besides having the pump installed, with water for the pump and the six-inch main. We had trouble with our pumping facilities and boiler facilities, and these were not placed and not in good position so that we considered we were in good shape to do business until the middle part, 1910.

At the time of the writing of the letter to Mr. Strassburger December 9, 1909, we were doing everything in our power to increase the water supplies. I recall that at that particular time, along in December, 1909, work was progressing with a view to the increase of the water supply which ultimately was consummated in the middle of 1910 by a larger supply of water. In completing its plan for bringing in that water supply, the company spent in the neighborhood of \$150,000. My first estimate for the bare pipe-line, additional pump and boiler facilities, was

(Testimony of Benjamin F. Levet.)

in the neighborhood of \$115,000; but we afterwards added the expense of the lower plants, digging these various wells that I have enumerated, which ran into money, and later equipping them with pumps. After the water supply had been materially increased, in the middle of the year 1910, it was never equal to the demand. At that time our company was drilling in the neighborhood of twenty-five to twenty-eight wells—strings of tools—going at one time. At that time our demands in that field must have been greater than the Standard Oil Company's. We looked to that field, at least in considerable part, for our fuel supply for the Santa Fe Railroad. Because of the shortage of water our own wells were practically shut down in the middle of 1908 and it was after September, 1910—I mean the middle of 1910—before we got in shape so that we could do much business. [529]

Prior to shutting down we always had trouble to furnish water for rotaries. They demanded enormous quantities of water. I made one investigation in which I discovered that one well had used, in 12 hours, 800 barrels of water.

Cross-examination.

(By Mr. HALL.)

That was an oil well on Section 4 in Township 32-23. It is six or eight miles from the Section 2 in controversy. I don't know how much water it took in the rotaries that were used in that well on this land in controversy. It is impossible to predict how much water a rotary usually requires in a

(Testimony of Benjamin F. Levet.)

day. I have given you the instance of one well requiring 800 barrels in twelve hours. That would be an extreme maximum. You cannot predict the amount of water that will be used by a rotary. This water is lost in these holes. It percolates through. There is a circulating system, and it is being fed constantly into the well, and the supposition is, when it is explained, that the water simply goes into the well and circulates and comes out again and gets new mud and goes back in and mudds up the wall and is used over and over and over. That is all right in theory, but when you come to put this water down in a hold one thousand or two thousand or three thousand feet deep there are places where this water seeps through, and there are places where there are bottoms that you absolutely cannot fill. You might run a thousand barrels in a well every day and not be able to fill it. But I am not able to tell you how many barrels, on an average, it would require to run a rotary rig.

I am not an oil man and I cannot give you an estimate of that. I am a water man engaged in furnishing water to wells but I don't know how much it requires on an average to furnish a rotary rig. My opinion in that regard would not be of much value to you. I have had experience in furnishing water for rotary rigs. The [530] water has been furnished to them and my only necessity for investigation has been where there were some complaints and it was necessary for me to determine where the water was going.

(Testimony of Benjamin F. Levet.)

This Lutweiler pump system was installed on August 18, 1909. In February, 1911, there was an additional Lutweiler pump installed in well No. 10. Well No. 10 had never been put on the pump prior to that time. There was water there all the time. Well No. 10 was finished September 10, 1909. There was never any time after the completion of well No. 12 on October 14, 1909, when we did not have a sufficient supply of water in our wells.

The only trouble was the lack of pumping capacity. We started this Lutweiler pump on August 18, 1909. At that time we were not using both the six-inch and three-inch line, completely filled with water. The use of the three-inch line was abandoned as a main pumping proposition after we had constructed the pipe as far as Section 8. We used that three-inch line as a distributing line after the six-inch line was constructed. It was filled with water as soon as it was necessary to use it for distributing purposes. We never tore the three-inch pipe-line up. We kept it filled with water, if we had occasion to use it as a distributing pipe-line. It got its water from the storage tanks that the new pipe-line delivered water into. We did not take it out of the six-inch line to distribute. I couldn't tell you how many acres of land the Santa Fe was operating in 1909. There was quite a large body of land. They were figuring ahead on a good many wells. I don't know as there was any stated number of wells. I couldn't say that during that year they were running as high as twenty-five or thirty strings of tools at one time. There

(Testimony of Benjamin F. Levet.)

were a great many strings of tools running in 1909 but I couldn't tell you how many. There were times when none was running and other times—probably three or four or [531] five. When they were stopped it was solely due to the lack of a supply of water. I wouldn't say there was no other reason why a well was shut down other than water troubles, because other troubles can happen to an oil well. Our water production started to increase towards the latter part of the year 1909. I don't know how many wells we commenced to supply with water immediately after October, 1909, but our water supply began to increase after October, 1909. Before that practically they were idle and shut down, and from that time on well after well until we got as high as say twenty-five or twenty-eight wells. The primary object of that water well and water system was to drill the Santa Fe's land. We were instructed not to let out any water to anybody else as we needed it, we were to conserve the water for our own use, and not let anybody else have any as long as we needed it. We needed that water prior to October, 1909, for our own drilling. We didn't have enough for ourselves.

Q. Why was it that you let the Hawaiian Company have water in January, 1908, to drill the northwest quarter of 31, in 31-23?

A. Well, it may be at that time that their meter was connected on and had not been disconnected—an oversight.

Q. You also let them have, in January, 1909, water

(Testimony of Benjamin F. Levet.)

to drill a well on the northeast of 31, 31-23, did you not? A. I couldn't say that we did.

Q. Have you any books to show?

A. I have nothing here to verify that; no, sir.

Q. You let the Amber Company drill a well on the northwest of 36, in 21-22, in October, 1909, did you not?

A. (Referring to papers.) I will state that in the month of October, 1909, the Santa Fe disposed of water to outside parties to the amount of 778 barrels.

Q. Who were they? [532]

A. I couldn't tell you that.

Q. Did you know of the Dominion being furnished with water in 1909 to drill a well on the northwest quarter of Section 15 in 31-22?

A. As I said before I have got nothing here to verify that.

Q. Well, what is your independent recollection? Have you any recollection about that?

A. The only recollection I have was some information that I gathered from my records which show that in June, 1909, the company disposed of water amounting to 27 barrels a day to all outside parties for drilling, domestic or any other purposes they wanted to use that water for.

Q. I didn't ask you about June, but about November, 1909, and the furnishing of water to the Dominion on the northwest quarter of 15 in 31-22.

A. Well, I thought I could give you my information in regard to what I absolutely know about June and October—

(Testimony of Benjamin F. Levet.)

Q. Well, I am asking you particularly now—I will get to that other a little bit later—

A. Well, I will have to answer in the same way, that I have no data here to show that.

Q. You have no independent recollection of it?

A. I do not, excepting that at that time we were not disposing of water for drilling purposes.

Q. Well, you said that you didn't furnish it to the Dominion Oil Company in November, 1909,—water to drill a well on the northwest quarter of Section 15, in 31-22?

A. They might have got a little water for drilling purposes, but it wasn't intended that they should.

Q. Do you know the Fox Company that drilled a well on the southeast quarter of Section 15, 31-22, commencing on November 26, 1909? [533]

A. The same would apply to them.

Q. You don't know whether they got that or not. Have you, or can you get me a statement of the water that was sold or otherwise disposed of by this Santa Fe water line during the year 1909?

A. I have the data right here before me from June, 1909, to December.

Q. All right; give it to us.

A. These figures represent the total amount of water that was disposed of to outside parties for any purpose, naturally, that they would wish to use it for.

Q. Just preliminarily, from what source do you get those figures?

A. From my own data out in the oil fields. I had it procured in advance.

(Testimony of Benjamin F. Levet.)

Q. And those figures were taken of actual deliveries? A. Yes.

Q. And not what charges were made, or anything of that sort?

A. Of meter readings that were under my charge during that time.

Q. Go ahead and read it.

A. June, 27 barrels a day; July, 47 barrels a day; August, 39 barrels a day; September, 102 barrels a day; October, 778 barrels a day; November, 1,210 barrels a day; December, 2,906 barrels a day.

Q. That was what went to outside parties?

A. That was what went to outside parties, yes, sir.

Q. You were in the business at that time and you were the person to whom one should make application in order to secure water, were you not?

A. Yes, sir.

Q. Did you say that Mr. Strassburger applied to you for water to be used on this Section 2? [534]

A. He did not.

Q. He never at any time made any application to you as superintendent of the Santa Fe water line to get water to drill with on Section 2, the section in suit? A. No, sir.

Q. And you never declined to furnish him any water for that purpose?

A. Not for Section 2; no, sir.

Q. Did Mr. Laymance or Mr. Tryon or anyone connected with the Section Two Syndicate make any application to you as superintendent of the Santa Fe

(Testimony of Benjamin F. Levet.)

water line for water after March 1, 1910, for use on Section 2?

A. I don't think that anyone ever made any application for water for Section 2.

Q. Did the amount of water that you were allowing outside parties to have continue about the same after December, 1909? A. No, sir.

Q. How long did you continue to furnish outside parties with water?

A. Well, I didn't quite understand your other question, and I will answer that first.

Q. Well, I mean how long did you continue to furnish about the same amount of water to outside parties after December, 1909?

A. After December, 1909, we began to furnish more water to those that were taking water, that had contracts covering water, and also additional parties that had applications in for water before, that we were not able to supply with water, and of course, instead of furnishing that amount of water we furnished double that amount of water. At the time these improvements came on, as I say, about the middle of June, 1910, then we began to furnish water in pretty good shape. [535]

Q. But in December, 1909, you were furnishing 2,900 barrels a day to outsiders?

A. That is, to our customers at that time, yes. And that was supposed to be for domestic purposes.

Q. And from that time on it increased up until the middle of 1910, when you furnished everybody all they wanted?

(Testimony of Benjamin F. Levet.)

A. No, we never furnished everybody all they wanted.

Q. Well, you furnished a very large amount, then?

A. We furnished, practically, two of the companies that we had under contract the water they needed, but we had very large demands for water that we could not supply. We were never able to supply the demands of the field.

Q. Don't you know that some of this water that you furnished to outside people was used for drilling purposes? A. It was not supposed to be.

Q. Well, don't you know that it actually was?

A. Well, it is immaterial to me how I answer that, in furnishing 2,900 barrels a day. With twenty companies, or the companies you enumerated, they are not going to do much business.

Q. It is real material to me that you tell us what the facts are.

A. Well, the facts are that they were connected up with meters with instructions that we were short of water and that it was not to be used for that purpose, and if they have drilled with our water I can't recall it.

Q. You can't recall in a single instance when you were furnishing 2,900 barrels a day in December whether they were using it for drilling purposes?

A. No, sir.

Q. Don't you know that the Fox Company actually had a contract [536] and they commenced spudding that well on the southeast quarter of 15 in 31-22 on November 26, 1909, with water that they

(Testimony of Benjamin F. Levet.)

got out of the Santa Fe Company?

A. I have nothing to verify that in my mind.

Q. Well, independent of any verification, don't you remember, of your own knowledge, that such was the fact? A. I do not.

Q. You were not at that well at any time after it was being drilled?

A. Oh, I might have been near there or have passed there, or something of that kind, but I didn't look to see particularly whether they were using our water or how much they were using or where it was being used.

Q. You simply say you don't know?

A. I simply say we were short of water and these people were instructed that the water was to be used for domestic purposes only. It was impossible to cut the meters off for the reason that they had to have water for domestic purposes, and if some of them used the water for drilling purposes we had no method of knowing it.

Q. Have you any books in the possession of yourself or your company which will show the exact companies to whom you delivered water and the amounts from October, 1909, on until the 1st of March, 1910?

A. I think they can be verified in the field.

Q. Will you please make an examination and produce those books here to show those?

A. It would take some time to do that.

Q. I know it, but I think we are entitled to that data. You knew you were coming here to testify on this subject, did you not? A. Yes, sir. [537]

(Testimony of Benjamin F. Levet.)

Q. And you knew that you were expected to testify as to the amount of water that was supplied by the Santa Fe Water Company during this time?

A. But I didn't know that I was to specify just how much water each party used during the time.

Q. You thought you were to deal in generalities only? A. Yes, sir.

Mr. HALL.—I would like to have that statement in the record, your Honor.

The COURT.—Well, the books are not here. Are those books here?

A. No, sir; they are out in the oil fields of Kern County at Bakersfield.

Q. (By Mr. HALL.) How long will it take you to get them?

A. Well, it will probably take a couple of days.

The COURT.—I suppose you could have a statement made and sent up here—a statement from your books. You can send it up here to the clerk.

The WITNESS.—Yes.

Mr. HALL.—Will you have that statement made up and send it up to the clerk of the court?

The WITNESS.—I will wire for that statement.

Mr. WHEELER.—We have no objection to this testimony going in, as far as we are concerned personally, but it seems to me that when a man comes here for the accommodation of both the Government and ourselves for the purpose of testifying as to water conditions in the field, it is perfectly immaterial as to how much water each individual company got. When it appears how much water this

(Testimony of Benjamin F. Levet.)

company was delivering, it seems to me that is sufficient, and the details of what the Fox Water Company or some other water company got is quite immaterial, and it is obviously only for the purpose of [538] furnishing the Government information for use in other litigation, and for that reason I object to the evidence as incompetent, irrelevant and immaterial, for the reasons stated, and I will ask your Honor not to order this witness to bring this data into court.

Mr. HALL.—I simply want to show, your Honor, that the quantities of water furnished some of these oil people, among them the Fox Oil Company and some of these other companies I have mentioned, will show that it could not possibly have been used for domestic purposes out there in the oil field, and that it must have been used for drilling purposes.

The COURT.—I am at a loss to understand what bearing it has on the particular case involved anyway. If the Santa Fe Company were furnishing all the water they had they were not in position to furnish water for Section 2, and that is the question in this case, as to whether Section 2 Syndicate could get water, if it is material at all, for drilling. So, I do not see how it makes so much difference.

Mr. HALL.—We would like to have it in the record to show that they were furnishing water to other oil companies, and that those people were drilling.

Mr. WEIL.—They had a perfect right to do that. But they were not obliged to furnish it to Section 2.

(Testimony of Benjamin F. Levet.)

Mr. HALL.—But they have not shown that they applied to these people.

The COURT.—Well, that is another question entirely; but the testimony of this witness is that the Santa Fe were using all the water they had. Either they or their customers were using it. And I don't think it makes any difference to whom they supplied it.

Mr. HALL.—This witness wants to leave the impression, apparently, that it was used solely for domestic purposes, and I do not [539] think the record will bear him out on that statement.

The WITNESS.—I have also admitted that this water ran through a meter, and we had no method of knowing what that water was being used for. But those people were notified not to use this water.

Q. (By Mr. HALL.) And you don't want to leave the impression that it was used for domestic purposes and not for drilling purposes?

A. I can't state that, because I don't know.

The WITNESS.—Shall I send that statement, your Honor?

The COURT.—No. That is not necessary. I do not think it is material.

Mr. HALL.—Well, with that statement now I don't know that it is, your Honor.

Redirect Examination.

(By Mr. WHEELER.)

I have no recollection of Mr. Strassburger or anyone speaking to me about water for Section 2 in particular. I remember a talk with Mr. Strass-

(Testimony of Benjamin F. Levet.)

burger with regard to his desire to get water from the company; he made application for water for other territory, over on the other side. That was some time in 1909. At the time he made that application we were not in position to supply him with water and we refused him at that time. We told him as soon as we could furnish it we could be glad to give it to him. I explained to him at that time as I did to other applicants that we were increasing our facilities and that we did hope to have a water supply. It was generally known throughout the field that the Santa Fe was spending money there to improve the water conditions. It was a matter of concern to the corporation and its future business to build up that particular territory and I took particular delight in building up the water proposition because it had been predicted that we did not have the water; in fact, the [540] Bakersfield paper came out and stated that the Santa Fe had twenty miles of six inch pipe-line and didn't have water enough to wet it and I was anxious to get it full once, anyway. That statement was made in the Bakersfield paper at the time that the pipe-line was completed, about the middle of 1909. When the pipe-line was completed I used every effort I could to increase the water supply and thus refute the statement which I considered reflected upon me as an engineer but the Bakersfield paper didn't come out and tell about it.

(Testimony of Benjamin F. Levet.)

Recross-examination.

(By Mr. HALL.)

We had demonstrated when we placed the first Lutweiler pump, which was a 15-inch stroke, six-inch barrel, that we had all the water in that well that that pump would handle; and we later increased that pump in size, that is, the size of the barrel, to an eight-inch, and later we put on an eight-inch pump with a ten-inch barrel. It was put in in the first part of 1910. That pump was shipped from Los Angeles, December 30, 1909, and was placed immediately thereafter. The pumping capacity of the plant was increased when we got the boilers in shape to handle the water at the upper plant to force the water along.

I might make a little explanation and say that our pumping plant was in two stages—one you might term as temporary and the other as permanent. In speaking of these wells at the lower plant it was necessary to have boilers to dig them. They were drilled. And those boilers were second-hand boilers sent over from the field and were very unsatisfactory at the end and when we were ready to do business and had larger pumps there. And also at the upper plant where we lifted this water over a distance of seven miles and an elevation of about one hundred feet it was necessary for us to have other pumps to handle that amount of water, as we had other and [541] smaller pumps to handle it through the three-inch line and it became necessary to have larger pumps to handle it through the six-

(Testimony of Benjamin F. Levet.)

inch lines; and then in order to have a factor of safety so that in case when the pump broke down we had another pump to go on, and it was necessary to have a second large pump, and ultimately we had the two large pumps and three 100 horse-power boilers at the upper plant to send this water along. We attained that stage of development when the last boiler was installed at the well—that is, the third boiler—October 13, 1910; but there were two boilers installed before that which practically were handling the business satisfactorily. When that stage of attainment was reached, in the middle of 1910, we were in position to furnish water in the field. Then we were in shape to fill our pipe-line, go ahead with our own operations and at the same time expand and distribute water to outsiders. That was along in July or August, 1910. We were not then supplying water to all people applying for it; we never did that. You must understand that when that field first started all of the development was up in the hills and the wells were very shallow and it didn't require much water, and there were very few companies operating there on the start; but finally, as someone developed a well in the lower ground, it caused a stampede. Everyone struck out for the lower ground, and the territory was all taken up after that time, and the wells under the lower ground were deeper and required more water, and of course the companies going in there to develop, there was a scramble for water. I am acquainted with the Western Water Company. As nearly as I can re-

(Testimony of Benjamin F. Levet.)

member, it got its water line into that field about the beginning of 1912. I couldn't say exactly when but it was about that time. When the line was completed they must have had considerable water. I never knew exactly how much, but it must have been considerable, because [542] they were able to accommodate a good many companies.

Redirect Examination.

(By Mr. WHEELER.)

When people came to me for water I told a good many of them that they would better see the Western Water Company or they had better see the Stratton Water Company. That was even after we had made these large installations. As late as September, 1909, we were selling an average of 39 barrels a day for domestic purposes. At that time people were instructed that we were short of water, and the water was not to be used for drilling purposes; and as you can readily see, 29 barrels, or 100 or 1,000 barrels a day distributed between the companies that were connected with our lines at that time wouldn't go much further than supplying them with water for their cook-houses, their men and their stock, and some were even using water for gardens and lawns. Stock in that country requires a great deal of water, the same as they do on other locations. There was considerable stock in there at that time. There was a scramble and everybody had to be hauled in by team. The roads were heavy and the material that was hauled was heavy, and it required large teams. The weather in the summer months

(Testimony of Benjamin F. Levet.)

was characteristic of the central states here. Even the month of Septemer is very warm down there. There was considerable increase in population and increase in demands along in the year 1909. People were scrambling for water for domestic purposes the same as for drilling purposes.

I explain the increase in the use of water in October, November, 1912, simply by the fact that we were getting in shape to provide more water. I have no means of knowing how much, if any, of that water, went into the drilling of oil wells, because as I stated before, they were connected up with meters and we simply instructed them not to use the water for drilling purposes. If they [543] did we had no means of knowing it unless, of course, we should happen to come across a condition and notice it, and I don't know of any particular case where we did. If that were done it was done surreptitiously and without my personal approbation. Second-hand boilers were used in drilling those wells for the reason that we could not procure other boilers in that field. There was a scarcity of material. There was such a demand for drilling material for wells and for rigs and for boiler uses that the railway companies couldn't get it in there. There were times that there were cars delayed along the railroad for weeks at a time, car after car, and they couldn't get it in there. There were times that there were cars delayed along the railroad for weeks at a time, car after car, and they couldn't get them through, and they didn't have the material in the field, and they

(Testimony of Benjamin F. Levet.)

had to wait for it, and there was considerable delay on that account.

Notwithstanding the relation of my companies with the Santa Fe Railroad Company we ourselves suffered difficulties in the way of delivery of freight and we even had to ship second-hand boilers from Melinda, Orange County and from the Kern River field. The scarcity of boilers in the market was due to the fact that they were not on the coast. The manufacturers woke up to the fact that there was more demand than they had the material on hand to supply.

Q. The reference you made there to the purchasing of a pump in the latter part of December,—in the routine of your business it takes some time to actually get your company to the point of giving an order, does it not, even after locally you have determined that a thing ought to be done?

A. As a rule, with large corporations, particularly railway companies, there is so much red tape that at times it takes a long time to get anything through. [544]

Mr. Perris was manager at that time of our oil properties.

Q. The reason I ask that question again is this: Mr. Perris, in a letter to Mr. Strassburger which is here in evidence, dated December 9, speaks about the possibility or probability of the company being able to supply him with water, and mentions that some pumps are being installed. Do you know what

(Testimony of Benjamin F. Levet.)

pump or pumps such a reference on December 9 would have relation to?

A. They would probably refer to the Lutweiler pumps at the water wells and also the large force pumps for sending the water along.

It was expected in December, 1909, that in due course we would have an increased supply of water. In fact, one of those pumps I have mentioned was ordered at that time. It was my desire at that time to accommodate Mr. Strassburger if I could and as soon as I could. I mean our company had that intention.

I slurred the Santa Fe a few moments ago but want to square myself in regard to these items of pipelines and water propositions, they granted authority almost on sight for all these improvements and instructed us to rush it along—to whoop it up. They got the land, and they got oil, and we must get it out. The improvements we contemplated by the latter part of December were the improvements referred to in the letter of December 9th to Mr. Strassburger.

Recross-examination.

(By Mr. HALL.)

Q. The Santa Fe railroad, with this so-called red tape, didn't hinder you any about getting orders through, did it? Is it not a fact that along in 1909 when they wanted this land developed they gave you instructions to order direct, yourself, and that you did not have to go through the Purchasing Department of [545] the Santa Fe railroad in order to get your material and equipment?

(Testimony of Benjamin F. Levet.)

A. I ordered no material and equipment other than that which would be necessary for men laboring in the field. I hired my own men and any equipment necessary for their convenience was at my command. But the pumps and pipes and things of that kind were handled through regular requisitions through our store department, through our manager.

Q. The Chanslor-Canfield Midway Oil Company's superintendent did that; it didn't go through the railway system's office?

A. It went through the manager's office.

Q. The manager of the Chanslor-Canfield Midway Oil Company? A. Yes.

This delay in getting boilers was not due to congestion on the railroad primarily; secondarily it was. So many of these things came along at one time that—I will cite as an instance that one time there was at least twenty cars sidetracked down below Maricopa and there was material there that was held up for a week or two or three weeks and that people ought to have had. These second-hand boilers that we shipped in from Los Angeles and the Kern River field had to come in over this same Sunset Railroad just as new stuff would.

By the COURT.—How many sources of supply of water were there in that field during 1909?

A. Well, there was the Stratton Water Company, which took out a sulphur water in Section 8, 32-23; and there were other small companies that developed small quantities of water from some wells that they

(Testimony of Benjamin F. Levet.)

had drilled for oil purposes and discovered there was water there; and our own.

Q. I mean people that were selling water. I don't mean those who developed it for their own use.
[546]

A. Well, as I say, there was the Stratton Water Company, our own company; and one or two other companies that took out water from wells they had drilled for oil and they sold some of the water—disposed of it. I couldn't cite you the names of the companies now.

Q. Was there any water brought in by rail during that time? A. Yes, sir.

Q. Shipped in from Bakersfield.

A. Yes, sir, there were trainloads of water came out to the field.

Q. Who was the manager of that water company?

A. I don't recall now who the manager was. It was handled independent of the railway company.

Q. The three principal sources of supply, then, were your company, the Stratton Water Company, and the water shipped in by rail?

A. Yes, sir; that is, the large supplies, and the smaller supplies, as I have stated, was where people furnished water from their own wells; but that was very small.

Recross-examination.

(By Mr. HALL.)

I don't know of Captain Matson's company coming in the field. I don't remember of anyone pumping water from Buena Vista Lake in 1909 except the

(Testimony of Benjamin F. Levet.)

Western Water Company. There was some company that had a pumping plant alongside of the railroad at Taft and had a tank up on a hill—well, up on what we call Twenty-five Hill; I don't know what section it is,—25 or 26; and they used to pump water that they got from the railroad company up in that tank and distribute it to customers. I don't know the name of that company, unless that is the one you refer to. [547]

Redirect Examination.

(By Mr. WHEELER.)

I do not believe that either the Southern Pacific Company or the Santa Fe Company had anything to do with that company. I couldn't say that that association went by the name of the railroad company. I don't know what the name was. It was the only concern of that kind that I knew of.

Thereupon by stipulation of counsel for the respective parties, the testimony of F. M. WORTHINGTON, taken in the suit of United States vs. North American Oil Consolidated et al., No. A.—48—In Equity, in the Southern District of California, was read into the record in this cause on behalf of the defendants, which said testimony is as follows:

Testimony of F. M. Worthington, for Defendants.

F. M. WORTHINGTON, a witness called on behalf of defendants, having been first duly sworn, testified as follows:

(Testimony of F. M. Worthington.)

Direct Examination.

(By Mr. WHEELER.)

My name is F. M. Worthington. I am a railroad man by occupation. My headquarters are Bakersfield, California. I hold the official position of Division Superintendent of the Southern Pacific Company. During the year 1909 I was Division Superintendent. I have knowledge of the car situation with reference to cars for the carriage of oil and water from Bakersfield or any point near there to the Midway oil fields. They were all handled from my office. I know that they organized a water company called the Kern Midway in January, 1909, I think it was. I couldn't tell the exact date. Prior to the organization of that corporation the railway company had been supplying a demand for some water in cars to the Midway Oil Fields and there was no water to be had other than the supply that the railroad had that they could load in [548] cars. With the same facilities that we took water in our engines, we could load the oil cars, and I furnished a limited amount to some of the companies that were developing out in that field prior to the time that this Kern Midway Company was formed. I was furnishing water from the company's supply, and the water was limited. I could only furnish, I think, not over five cars and oftentimes less. The companies out there would call me on the phone, and some of them even wrote to me from San Francisco here. Some would direct them to—they would say the superintendent down there would fix you out with water, and

(Testimony of F. M. Worthington.)

some of them wrote me letters; and when the Kern Midway Water Company was formed I referred them to Mr. Young for their water, and I furnished cars. From the time that arrangement began, from January, 1909, the demand for water from the Kern Water Company was very much in excess of the cars that I was able to furnish. After the organization of the Kern-Midway Water Company people other than the representatives of the Kern Midway Water Company talked to me and came to see me with regard to furnishing cars for water. It was a frequent occurrence for developers in the field, the various oil companies,—the superintendent or the manager out there would call me on the phone, even during the midnight hours, and tell me that he had been talking to Mr. Young on the phone and he said he had plenty of water but he couldn't get any cars, and they all threatened me that they had a hole in progress of development and that their casing would freeze if they didn't get the water and the company would pay for it, and I furnished all the cars I could. I did the best I could to that end. I worked our car repairers over time up until late in the evening, nine and ten o'clock on the rip-tracks to repair two or three of my bad-order cars that they could make repairs on and get them off the rip-tracks with the switch engine [549] by nine or ten o'clock and place them where they would have a load to go out on that train that left at 2 o'clock in the morning. That is when the water train left.

I think I had complaints in writing of a shortage

(Testimony of F. M. Worthington.)

in cars as early as the 12th day of January, 1909. The letter which you have just handed me is a letter that was written to me and received by me in the regular course of business, to wit:

Mr. WHEELER.—We offer the letter in evidence as follows:

“Stockton, Cal., Jan. 12, 1909.

Mr. F. M. Worthington,
Supt. of S. P.,
Bakersfield, Cal.

Dear Sir:

In the latter part of July, 1908, the writer called at your office in San Francisco in reference to securing a water supply for the Gate City Oil Co.'s property in the Sunset Dist. for the use of drilling and boiler purposes. We were informed by your company that you would supply us with Bakersfield water for this purpose by a letter written by your Mr. Worthington at Bakersfield per request by wire from your Mr. Ingram's office. An order was placed by this company with your Bakersfield office for it, and we were to receive one large car of water a day. For a time the water was received without any interruption. For the last week, however, we have been unable to secure this water through some cause or other, and as a consequence have been short of a supply. We would be pleased to have you call your agent's attention at Bakersfield to this matter so that we may be able to receive the water in the future.

Very truly yours,

GATE CITY OIL CO.,

Per (Sgd.) IRA E. SMITH.”

(Testimony of F. M. Worthington.)

This Sunset district was on this same line. After the first day of January, 1909, I couldn't assure anybody that we would furnish them any specified amount of water for delivery in the Midway District. Subsequently to that time and notwithstanding the organization of the Kern Midway Water Company a good many of the applications came directly to me in the first instance for water. After the Kern Midway Water Company was formed I referred [550] these applications to Mr. Young, who was handling the Kern Midway Water Company. If these applicants would write me a letter I would occasionally write them a letter and tell them I couldn't furnish them with water. The letter which you have handed me is a letter I wrote to Mr. Burns on February 16, 1909. That fairly expresses the responses that I was giving to the applicants who spoke to me in reference to the water. I wrote a letter similar to that to everybody that wrote me for water. I didn't give them any guarantee of any particular amount.

Mr. WHEELER.—We offer the letter in evidence.

“Bakersfield, Feb. 16, 1909.

Mr. T. J. Burns,

Supt., Brookshire Oil Co.,

Orcutt, Calif.

Dear Sir:

Replying to your letter of Jan. 30th, to Asst. Gen'l Manager W. R. Scott, which has been referred to me, with reference to this company furnishing you water at Siding No. 4 in the Midway field.

We could make you no definite promises along

(Testimony of F. M. Worthington.)

this line. We have as a matter of accommodation to the producers in that field, been letting them have any surplus water that we could spare from our supply at Bakersfield at what it costs us to handle same plus the regular freight charges. We will be glad to furnish you with any water we can spare but could not agree to keep you supplies, you would simply have to take your chances along with the other consumers.

Yours truly,

Supt.

CC. to H. V. P.”

That is a carbon copy of the original. My signature was there above the word “Superintendent.” It was signed “F. M. Worthington, Superintendent.” There never was a time when I could have assured either the Kern Midway Water Company or any intending customer of that company or any person desiring to have water hauled in cars that I could furnish any given number of cars at any given time at any time after the 7th day of January, 1909. There never [551] was a time when I could furnish them a day ahead. They ordered the cars during the morning, through the day and up until ten or eleven o’clock. I wouldn’t know myself how many cars I could let them have more than twenty-four hours in advance. The orders were filled from empty cars that were returning from the oil fields. They were all brought into Bakersfield and inspected there by our car inspectors and put in the trains there that went out into the Kern River and the McKittrick

(Testimony of F. M. Worthington.)

and Sunset oil fields. All those cars were brought right into Bakersfield and distributed from my office.

Cross-examination.

(By Mr. HALL.)

Q. Haven't you some records in your office showing the number of cars that were loaded with water at Kern Junction or Bakersfield to go out along the Sunset Midway for the North Midway field?

A. Well, the agent might have biling instructions, that is all. I don't think I have any in my office.

Q. Don't you keep what is known among railroad men as a wheel report?

A. The yard office has a car report, in the yard office.

Q. And that would indicate, would it not, the number of cars that went out each day loaded with water from Bakersfield or Kern Junction out to the North Midway field?

A. Well, it would give the number of cars that went out there. I don't know whether it would specify that they were loaded with water or empties. There were no empty oil cars went out there, without it was a particular car for gasoline, or something like that,—a foreign car, you know, that comes from some of these—

Q. But all of your tank-cars that went out there were always filled with water unless there was some exception like a car going [552] to get gasoline that would be injured by hauling water in it?

A. Always. We never hauled an empty out into the Sunset field where we were delivering the water.

(Testimony of F. M. Worthington.)

Q. And it is also true, is it not, that lots of times you sent out cars that came back empty and were re-filled with water and sent out again without hauling out a load of oil?

A. I don't think there was a water car brought back into Bakersfield—there did some return at Gosford Junction about nine miles from Bakersfield, and they were hauled out to McKittrick and brought back with oil.

Q. But were there any brought back empty into Bakersfield, where they might be again loaded with water and again returned into the field without loading with oil?

A. There might possibly have been a car that the valve was leaking or was in bad order that would have come in and go to our inspectors and the car repairers would work on it, or something like that; but other than that there was nothing.

I cannot tell you how many domestic water cars we had on that line in 1909. We had nine locomotives working out in that field switching and handling the business, and each one of those locomotives had two water-cars. It took two water-cars to do it for twenty-four hours. There was no water out in that field, and they hauled their water from Millux. That is our water supply. We would bring down five or six of those locomotives and they would fill their water-cars and take them to Maricopa and Taft and in that country. Those were 6,500 gallon cars—what I call a small oil-car. They were oil-cars that were washed and cleaned out and used for that purpose.

(Testimony of F. M. Worthington.)

There were one or two wooden cars in there, or tank-cars; I don't know just what the capacity of those was.

Prior to the time the Kern Midway Water Company was formed [553] we went into the North Midway field or out towards Fellows and Taft during the year 1909 a considerable number of cars per day, loaded with water. Some days it would be one or two, and I don't think there was ever five when I was furnishing them out of the railroad supplies. After that it started in, I think, about four or five cars, and gradually increased right along. I don't know just exactly the dates and the numbers, but it gradually increased until it got up to a pretty big train of water-cars—probably fifty. I don't know but there were some days it would run over that. It ran up to fifty on some days, and I think there was a day or two that it ran over that. I couldn't answer your question as to how long it was after the first of January that we reached the point where we were sending as many as fifty cars a day out from the field. My memory don't serve me well enough for that. It has been about six or seven years. I can tell you where you can get the information as to the number of cars that were sent out containing water from Bakersfield to the Midway Field in 1909–1910. Mr. Young, the manager of the Kern Midway, knows every car that was billed out.

Q. Well, we had Mr. Young on the witness-stand, and he was not able to give us much definite information, and Mr. Young said that it was undoubtedly

(Testimony of F. M. Worthington.)

true that every car that passed Bakersfield going into this Midway field—every tank-car—went out loaded with water, and he thought your records would show exactly during those months and years what tank-cars were hauled out to the field.

A. The agent billed those cars out the same as any other freight. His record would probably show. And the car clerk down in the yard office, his record would probably show. But I doubt very much whether a man would be able to get those records. They were filed away and nailed up in boxes and stored away in a little building down below our roundhouse. There is no objection, as far [554] as I am concerned, to your men looking them over if he can find them.

Q. Well, you will grant us that privilege, so that, if they are not available at this time for this suit, we may have them in the future?

A. Well, Mr. Young billed that out, you know, and he has a record of those, the same as any other shipper.

Q. What I want to get at, primarily, is this: The question is as to whether all the tank-cars that went out there were loaded with water. Now, Mr. Young's records would show that only such cars as he billed out would contain water, and your record would show all of the tank-cars that went out, so that we can tell whether or not all the tank-cars that went out were filled with water.

A. I don't think you will find an S. P. car that went out there empty. But there were, I think, a

(Testimony of F. M. Worthington.)

few Santa Fe cars went out. You understand the Santa Fe operated jointly over that track. They owned a one-half interest in the Sunset Railway Company, and they sent equipment out into that field, and I had considerable trouble with the Santa Fe on account of loading their cars, and there was a time when they wouldn't permit me to load their cars with water for the reason that it took five days to make the round trip when they went out loaded with water; that is, they would spot them on what we call the transfer—that is, turning them over to the S. P.—and there they would have to be inspected by the S. P. inspectors, taken off the transfer and spotted at the water rack and loaded with water. Now, that would consume a day. Then they would send them out into the oil field at night, leaving the next morning at two o'clock, would get out there and be spotted that day and they would unload the water. They wouldn't get out there until [555] afternoon, or after. They had to double a hill. That is a hilly country, you know, and it was very much congested out there. They would be unloaded and next day they would spot them for loading with oil, and the next day they would bring them in, and the next day I would bring them in, and that, all together, consumed five days and they made a serious complaint, so that—

The greater portion of the cars that went into the field were S. P. cars. Some of the Santa Fe cars were loaded with water at that time, too. I loaded them despite the fact that they objected. During

(Testimony of F. M. Worthington.)

all of this time of 1908 and 1909 I was not seeking to show preference to any shipper, one over the other. I played that gave absolutely fair. We only furnished the water up until January, 1909. Prior to that time I made everybody order their car in the morning, and I would fill the car just before that train went out. That water was handled on a train that left at six o'clock. They would order their car either late in the evening before or early in the morning, and the first come would be first served. I made no distinction between the applicants. I wouldn't agree to furnish any man a car a day or a week or anything. I told them all first come, first served, because I didn't have enough to supply the demand.

I couldn't say positively, but I presume it is a fact, as stated in the letter written to the Gate City Oil Company on January 12, 1909, that they had commenced to get water of our company in the latter part of July, 1908. Different people were getting water some time before that, whenever we had a surplus so that we could furnish them with water.

The letter to the Gate City Oil Company says: "An order was placed by this company with your Bakersfield office for it, and we were to receive one large car of water a day. For a time the [556] water was received without interruption. For the last week, however, we have been unable to secure this water through some cause or other, and as a consequence have been short of a supply."

I presume the Gate City Oil Company was using that water for boiler purposes in drilling oil wells.

(Testimony of F. M. Worthington.)

I presume it was used for boiler water and for drilling oil wells to pour down in the hole where the casing works up and down.

Q. So that it is apparent that from July, 1908, all up until a week before this letter of January 23, you had been prepared to and had supplied that water satisfactorily?

A. Never supplied any water right along regularly. Those people wrote me letters like that and would assume that I was going to furnish them a car of water. But in the early part of the game there was quite a few of them that were trying to get water, and after that—because at first I had enough so that I gave this man a car out of what I had for a short time there, and he thought he was getting his order filled every day.

Q. Now, up to the time the Kern Midway Water Company took over the proposition you did not have such a demand for water, did you, as came on after January 1, 1909?

A. Well, I couldn't say positively. When we first started out there there was only a car or two a day. At first I guess it was a car or two a week. And then the demand gradually increased until it burdened my water supply so that I was trying to get away from it.

Q. Now, that burden didn't come on your water supply until about January 1, 1909, did it, when the Kern Midway people took it over?

A. Oh, yes, it was before that that they were after me for water, because as soon as the Kern Midway took it over he commenced [557] to supply them

(Testimony of F. M. Worthington.)

with more water than I could supply cars for.

Q. Your limitation was due to the amount of water you had, was it not? A. Yes.

Q. So that when they developed this Kern Midway supply they had plenty of water and the limitation became the number of cars. That was the situation, was it not? A. Yes.

Q. Now, in 1907 and 1908 were you having a great demand for cars of water, or was it just an occasional water demand?

A. Well, I think at first there was three or four companies, I guess, was about all that were operating at that time. My memory don't serve me very clearly on that. I know at first there were just a few companies, you know, and they would come in and ask me for a car of water. I don't think anyone wanted more than a car a day or something like that.

I couldn't say positively, but I think, though, that situation occurred in 1908. While this situation was in existence I did not have water always to furnish them. There were days when I never gave them any. This water that I furnished was for my engine supply. When we would have a little increase in business I couldn't furnish any water, because the engines had to have it all. We didn't have quite so much demand during 1907, 1908 as we did early in 1909, but as my memory serves me there was always a demand for more water than I could furnish when I was furnishing the water. And after the Kern

(Testimony of F. M. Worthington.)

Midway was formed it shifted from the water to the cars.

Q. But I am getting back in 1907. From the first of January on, during the year 1907, did you have any great trouble over the demand for water,—as you said a while ago that sometimes it was a car a month or a car in two weeks or something of that sort?

A. Well, I don't think that each company that was operating [558] at that time was asking a car a day. There was more than a car a week going out there. There were cars went out there probably every day, but they went to different companies. Every company didn't want a car a day.

Q. But what I was getting at was that in 1907 there was not this demand. You were better able to meet the demand in 1907 than you were in 1908 and 1909?

A. Yes. I am sure there was not the demand in 1907 that there was in 1909. As a matter of fact, there was only one train running out there.

Q. In 1907 and 1908?

A. In the early part of 1907.

I don't know what we charged for water in 1907 and 1908. I don't think there was any charge made for the water. There were freight charges on it. The letter that I produced from the Gate City Oil Company dated January 12, 1909, came to me through the mails. The copy of the letter dated February 16, which I addressed to Mr. Burns, Superintendent of the Brookshire Oil Company, I wrote in my office.

(Testimony of F. M. Worthington.)

I made a search through my files to look for some letters when I brought these into court and these were the only two I found. I found lots of other letters of various kinds pertaining to different kinds of water. Some was for domestic water when the population grew out there considerably,—and I was using the—the same cars that we handled domestic water in were the ones that I handled my engine water in. Of course when I had so many engines out there I was short of domestic water and I didn't get—looking through my files I couldn't locate the boxes back as early as 1907–1908.

Q. Independent of any letters that you had, do you remember any requests that you had in 1907 and 1908 from the Pioneer Midway [559] for water?

A. Well, that is a long time ago, now, to remember just a conversation over the phone. Most of that was done over the phone, by some representative of the oil company, who would call me at my office and talk with us. But there was hardly a day passed that there was not somebody called at my office, and numerous phones requesting a car of water.

Q. Do you remember any specific demand upon you in 1907 and 1908 by the Pioneer Midway Oil Company or Mr. I. Strassburger that you ship them water out in their tank-cars for use upon this section 2 in township 31, range 23?

A. Why, I remember Mr. Strassburger came to my office, yes.

Q. Do you remember what particular lands he wanted it for?

(Testimony of F. M. Worthington.)

A. Why, I really couldn't say whether he told me what land, now, or not. But I remember Mr. Strassburger calling at my office more than once. I don't know the exact dates.

Q. You furnished Mr. Strassburger water in tank-cars for some time, did you not?

A. I guess he got his share with the balance.

Q. And was that or not along in 1909, after the Kern Midway Water Company started its work, that Mr. Strassburger was taking water for up on section 30?

A. Well, he was there after cars after the Kern Midway took the water. I remember that. He was after cars. We furnished him with some water ourselves from the railroad supply.

Q. Before the Kern Midway took it over?

A. Yes, sir.

Q. Did you ever know of him making any demand on you for water specifically for Section 2, 32-23, which you refused or could not fill? [560]

A. Well, I couldn't say positively that he did, but he was using the water out there, and I didn't ask a man where he was developing or anything like that. When he came to me I just discussed the possibilities of furnishing him the water and explained to him how I could furnish it.

Q. And you were always willing during all of that time to furnish all of the water that your capacity could permit?

A. I always gave them all I could possibly spare from my supply, and when the Kern River was sup-

(Testimony of F. M. Worthington.)

plying the water I gave them all the cars I could spare from our service.

On the first of September, 1909, the Sunset Western Railroad extended from Gosford up to Maricopa—Hazelton it would be then, and Maricopa it is now. And two miles from the end of that line there was a junction there they called Pentland Junction, and they built this line they called the Sunset Western Extension—that is what we call it—the Extension, because that was built after the other. Now, they built down here about Fellows, right in here (indicating). That was the end of the track. Just north of Fellows. They then extended it down to a place called Shale. I couldn't tell the exact date when it was extended to Shale. I will tell you why. Because a man by the name of Isaacs did the construction work. I didn't do the construction work. All I did was to furnish him with a car. I couldn't tell you whether the line was extended as far as Fellows by September 1, 1909. I couldn't answer now because I don't know. It was extended out to Fellows in the year 1909 but I don't know the month.

Redirect Examination.

(By Mr. WHEELER.)

When Mr. Strassburger called upon me and asked me for cars after the Kern Midway Oil Company had been organized, I told him I would furnish all I possibly could. As a rule [561] I would encourage those men and tell them I would try to get them cars and do the best I could to accommodate them.

(Testimony of F. M. Worthington.)

I always told him that the cars were limited and that I couldn't give him any definite amount or promise him a certain number, as I couldn't get them. I had to depend altogether on the empties returning and I gave the water company a certain *pro rata* of what was requested for loading into McKittrick and Kern River fields, the general field, the Kern River oil fields, for loading oil and they got their *pro rata*. Up to the time the Kern Midway Water Company had started the water supply was from the railroad company's well. Thereafter that supply was no longer used but the Kern Midway Water Company had a water supply of its own. The water that I furnished comes from the company's wells at our roundhouse. We never at any time had sufficient water there so that we could assure anybody who came to us in 1907 or 1908 a definite water supply. We only had the one engine tank where we take water on our locomotives. The supply was limited in the well. We pumped that well night and day. Sometimes we had to keep it for our engines and couldn't send out any cars. We only gave them the surplus that we had.

When Mr. Strassburger spoke to me after the organization of the Kern Midway Water Company I do not remember that he referred to any particular location that he wanted to bring the water to. He wanted it out in the Sunset Field. All the water that we supplied was going out into the Sunset Field. We never had a surplus of cars so that we could guarantee them any amount.

(Testimony of F. M. Worthington.)

Recross-examination.

(By Mr. HALL.)

I did not discourage these people from taking water through this water supply. I tried to furnish them all the cars I could. When I was supplying the water myself I didn't try [562] to foster and build up that business and get as many customers as I could reasonably supply. I wasn't trying to get customers because I had more customers than I could supply but when the Kern Midway people took it over I endeavored to make that a source of revenue for our railroad out there. I wanted to develop the field. I wanted to see the field developed. I always referred these people to Mr. Young for water. I told them he had plenty of water. They had an excellent well there. They could load twice as many cars as they did load.

Mr. Young had almost daily demands on him for cars and the company couldn't furnish the cars. They didn't have them. The Sunset Field is forty-nine miles, I think, by rail from Bakersfield. That is all single track.

Redirect Examination.

(By Mr. WHEELER.)

As a matter of fact, in 1909 there was a good deal of freight congestion along that line. I had two or three hundred cars of oil well supplies standing around there that couldn't get out there. There was no place to locate them in the fields. The congestion was so in the oil field that they couldn't unload fast enough. They couldn't get teams to haul their lum-

(Testimony of F. M. Worthington.)

ber and supplies away from the railroad, and they would hold cars there for two or three days. The congestion was such that I could not get cars spotted when I wanted them. A man who would have a little spur-track would have three or four cars and he would have a dozen waiting to get in on that spur. That caused a congestion all along the line on the sidings or on the spurs.

Recross-examination.

(By Mr. HALL.)

There was congestion on the line in 1909. The congestion started along about in 1908. Then when they commenced [563] to get water, when Mr. Young furnished a supply of water, the congestion gradually increased, because it made it possible for those men to develop, and everybody wanted to develop out there, and they ordered oil well supplies, rig material and stuff like that, and it all came at once and kept coming. There was a pretty good business out there when I turned it over to the Santa Fe in 1911. I couldn't say just how long after that it did continue. There is only one freight train running out there now. In 1909 I had eighteen crews working out there—nine engines, and the crews were working day and night. I ran a train every time I could get them together and keep them working. We didn't have those trains carded; we ran them extra out there, under train orders, whenever we could. We would send a man out there with a lot of loads, and he would pick out the empties and stick the loads in where we took the empties out, and I

(Testimony of F. M. Worthington.)

had them switching around out there all the time. There were nine regular crews working and they worked 12-hour shifts. That would be eighteen crews on nine engines.

Thereupon by stipulation of counsel for the respective parties, the testimony of E. W. KAY, taken in the suit of United States v. Brookshire Oil Company et al., Nos. A.-34, A.-35, and A.-36—In Equity, in the Southern District of California, was read into the record in this cause on behalf of the defendants, which said testimony is as follows:

Testimony of E. W. Kay, for Defendants.

E. W. KAY, a witness called on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. MORRISON.)

My name is E. W. Kay; I am a resident of [564] San Anselmo. I was connected with the Stratton Water Company. I succeeded Mr. E. D. Burge as the superintendent of that company in the early summer of 1909. Well, I don't know the date. It was in 1909 and I think May or June or somewhere along there. I was connected with the Stratton Water Company prior to that time but it was not the Stratton Water Company then. We were drilling for an oil well. I think I remained as superintendent of that company until the fifth or sixth of June, 1910. I resided during that time on the properties of the company in Sec. 7, Township 32, Range

(Testimony of E. W. Kay.)

23. At that time I was familiar with the supply of water and the water conditions to a certain extent. I have not had anything to do with water in the Midway field since July, 1910. I have been engaged in other business entirely. During the year that I was in charge of that company, the Stratton Water Company did not have sufficient water to supply all of its applicants. I think I am able to state how much water we had—I have made as high as, I think, 3,300 barrels a day. When I went there we were trying to produce water out of two wells most all the time but there was really only one producing well. We pumped that well to its fullest capacity. We got all the available water. The best I could ever do was 3,300 barrels a day. That is the best I could ever do out of the two of them. But one of them wouldn't last. You could pump it a little while and it would disappear and you would have to wait several hours before you could pump it again. I cannot tell you how much water we had obligated ourselves to supply during that period. I could have supplied a whole lot more water than I could produce if I had it. I should judge that we had applications for from fifteen to twenty thousand barrels. The obligations which we had assumed were to furnish seven or eight thousand barrels I would think, and I couldn't always fill [565] that. Some days we had more than on other days.

Q. Directing your attention, now, Mr. Kay, to the properties known as the Hale-McLeod Oil Company; the California Midway; the Olig Crude; The Pacific

(Testimony of E. W. Kay.)

Crude; the Canadian-Pacific, and the Cleveland Oil Company, did you have any applications or any obligations with any of those persons to supply water, do you recall?

A. I had to furnish the Hale-McLeod Company all the water they needed if I had it.

Q. And you were obligated to any of the others, or did any of the others use water through your lines that you recall?

A. Oh, yes, I don't recall all the companies now. I can't. I have furnished water to all you have mentioned there, though.

We had trouble with the water consumers over the supply of water. That is about all I did have, was trouble. I couldn't furnish them the supply they wanted. I had to divide the water up among them the best I knew how. I had some trouble with reference to our pipe-lines. I had to watch some of them to keep them from taking the water from others. It was brought to my attention on more than one occasion that that was being done. Now, I don't know whether I should say that or not because I never caught anybody doing it, although my meters and gates would be shut off and it would be opened in other places. I would find that I would open a meter in one place and when I would go there again it would be shut off, and one that I closed up probably would be opened. I never caught anybody doing that. If I had I wouldn't have had them arrested because I thought they were doing what any of us would have done under the circumstances. There

(Testimony of E. W. Kay.)

was no way of those meters opening themselves.

I recall the Brookshire Oil Company on Section 24, Township 31-22; I do not recall any particular complaints of trouble [566] from that source. I know I had complaints all the time; I couldn't say the Brookshire any more than any other. I will say this to you, that I never furnished anybody with water that I didn't have more or less trouble. I do not think I recall a single individual that was satisfied with the supply. I don't think I can. Well, I don't know now. Maybe the Olig Crude was. I don't know of ever having any complaints from the Olig Crude people.

Cross-examination.

(By Mr. HALL.)

There were meters that measured that water in different places. Some of them were down on the line opposite the people that the water ran to; others were up near the plant. After we got the large line, most of the meters were right near our plant on Section 7. I think we got the large line late in 1909 or early in 1910. I could deliver water better than I could before because the lines would take it. I couldn't deliver any more water than I could produce. I didn't produce any more water than I could before because the lines would take it. I couldn't deliver any more water than I could produce. I didn't produce any more water than I did before. I said that I had made 3,300 barrels of water a day. That was not the capacity of the well by any means. I said that we had contracts for

(Testimony of E. W. Kay.)

about seven thousand barrels a day. I am only guessing at that. My memory is not clear or accurate on that. I did not get those figures principally from this affidavit that counsel Morrison read to me out of this brief, I know just exactly what I testified to two or three years ago, or three or four years ago, and I have got to go a great deal by that now. As far as my memory is concerned now, I can't go back to those things. I was interviewed last Thursday by Mr. Favorite in regard to these matters. I told him that I couldn't remember what the capacity of the plant was, and I say so yet. I am telling you what [567] I think it was. Since Mr. Favorite interviewed me I have read over the affidavit that is in this brief.

Our plant was broken down many times while I was there and there were lots of times that I couldn't send water out on the line because our pumping plant was broken down. That was the cause of part of the complaints from the oil men. I do not think that part of the complaint was due to the fact that some of the oil men out in the field were trying to hog the water and some taking more than they were entitled to. I think they were trying to get all the water they could so they could keep running. I think they tried to get all they could notwithstanding that they were encroaching upon the rights of some of their neighbors. We tried to dig more wells while I was there. We dug four wells and they were all failures. I think they were all about a thousand feet deep. The well from which the prin-

(Testimony of E. W. Kay.)

cipal supply of water came was about the same depth, about 900 or 1,000 feet. Those wells were drilled close together. In one well we got water and in the other one we did not. Two of the other wells we never could do anything with and in one of the other wells we could get some water. They were carefully drilled down to this same formation. There was water in all of them, but not to do any good. You could not get it out. It wouldn't fill up fast enough to pump it out. I couldn't tell you what was the cause of that. I have not been to the plant since July 5, 1910. While I was at the plant all the wells except one were put in. There were two different compressors put in after I went there. The compressors operated successfully all the time I was there. We had a 180 horsepower compressor in there.

I don't know what arrangements were made for the Majestic to get water out of the Brookshire line. I do not remember anything about it. I cannot recall any arrangement for the Logan people to [568] get water out of that line. I think I knew about the Mays Oil Company getting water out of the Brookshire line. I think they did. Because the Mays Oil Company got water before the big line was laid in, and they had to get it through the Brookshire line. The Brookshire people laid a line to the plant,—a two-inch line. I don't know whether the arrangement with the Mays Company was made with me as Superintendent of the Stratton Water Company or between the Mays Company and the Brook-

(Testimony of E. W. Kay.)

shire Company. The Stratton Water Company didn't own that line. I don't know whether the water that went up through the Brookshire line was measured in the meter at the plant. I don't remember that. I do not see how it could be measured there if it went through their line. The Brookshire line doesn't reach directly down to our plant. I do not remember whether their meter was right at the plant. I know the Brookshire people had water but I don't know how the Mays people got it. They got it through the Brookshire line, though. What became of the water after it went into the Brookshire line I don't know anything about. I don't remember whether our account for that water was between the Stratton Water Company and the Brookshire people.

Redirect Examination.

(By Mr. MORRISON.)

I remember that we had an account with the Mays people. We carried a direct account between the Stratton Water Company and the Mays Company and we also carried an account with the Brookshire Company. Separate bills were rendered to each. But I must say that I don't know what arrangements they had about getting the water through the Brookshire line. I don't remember anything about that.

This quotation that you showed me came from an affidavit that I made some time ago. I cannot recall about the date when I [569] made that affidavit. I think, though, that it was made down there. I checked up the facts at the time that I made the

(Testimony of E. W. Kay.)

affidavit. At that time I was satisfied that I was making it correctly. That was before I ever saw or heard of you (Mr. Morrison). I never saw you until I saw you here that I know of. I do not know anything about having trouble about turning the valves on in the Mays line when I saw them coming and turning them off after that. I do not recall anything of that sort. It is too long ago for me to remember. I stated in answer to Mr. Hall's question that I found water in all wells, but the supply in two of them was not sufficient to justify our pumping. The water was encountered at substantially the same depth—as I remember, they were about the same depth.

Recross-examination.

(By Mr. HALL.)

I do not now recollect of having gone to my books to check up the amount of water at the time I made out this affidavit. I do not believe I would have certified to that at the time unless it was right or unless I thought it was right. I couldn't tell you now whether that was just my memory or not. I do not now recall comparing the figures in my affidavit with the books or anything of that sort. I couldn't tell you anything about the Mays Company and my collecting bills from them. I think I furnished water to the Mays Company, the first water they used, I think, but I couldn't swear to that even today. I believe I furnished them the first water they used down there. I collected bills of the Mays Company for water they got through the Brookshire line. I

(Testimony of E. W. Kay.)

don't think the Brookshire paid for their water. I don't think the Mays paid for the Brookshire water, or vice versa. I certainly collected for the water that the Mays Company got out of the Brookshire line. I certainly collected for that independent of the [570] account against the Brookshire because I remember there was some arrangement that they made between themselves that the water could run through there. Now, I don't know what it was but I know there was water went through that line and went to the different companies—that is, to the Mays, especially. I don't think it was a fact that there was only one meter on the Brookshire line and that that was the meter that belonged to the Brookshire Company because I know that the Mays Company paid me for their water, and I know that the Brookshire paid me for their water, and I know another company that I tried to furnish water to but I couldn't, and that was the Bear Creek Company built a line of their own from the Brookshire line and pumped it into their tanks. The Mays Company didn't build its own independent line to our water plant. They built their line from our main line after we got it up in there. After that time I think we collected from the Mays Company.

Judge (the Court), I don't remember whether I made the contract with the Brookshire Company or whether Mr. Burge made it. I hardly think I could tell now whether there was any specified amount of water that the Stratton Water Company was to furnish the Brookshire people. We always furnished

(Testimony of E. W. Kay.)

all the water we could to them. That is the best I could remember now.

Thereupon by stipulation of counsel for the respective parties, the testimony of E. W. BAILEY, given in the suit of United States v. Brookshire Oil Company et al., Nos. A-34, A-35, and A-36—In Equity, in the Southern District of California, was read into the record in this cause on behalf of the plaintiff, which said testimony is as follows:

Testimony of E. W. Bailey, for Plaintiff (In Rebuttal)

E. W. BAILEY, a witness called on behalf of the plaintiff, [571] in rebuttal, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is E. W. Bailey. I live at Taft, California. I am superintendent of the St. Helena Petroleum Company. I have been engaged in the oil business in the State of California for 17 years. I was employed in the Midway field in 1909, by the Mays Oil Company, as superintendent. We were engaged in drilling well No. 1, on Section 30, Township 31, Range 23. I was there when the well was spudded in, some time in the summer of 1909, and remained until some time in 1910. The well was drilled to a discovery of oil while I was there and became a producer of oil in commercial quantities on the 4th day of March, 1910. When we first

(Testimony of E. W. Bailey.)

started to drill we got water from the Pioneer Midway; later on we connected up with the Brookshire. While I was there we did not have a great deal of trouble on account of a lack of supply of water for drilling. We never lost any casing in that well on account of supplying the water. That was the Mays Oil Company well on the southeast quarter of 30, 31-23. We were never shut down over 12 hours at any time I remember on account of lack of water. We never lost any casing or had any casing freeze on account of lack of water.

Cross-examination.

(By Mr. MORRISON.)

We were shut down at various times for lack of water, but not over 12 hours at any time that I remember. The lack of water occurred when we were taking water through the Brookshire line. When I was with the other company we were shut down a little bit, but that was because we only had a one-inch line. We didn't have as much trouble when we were with the Brookshire. I don't remember the time when we connected up with the Brookshire, but it must have been some time along in September, I should say, 1909. I fix it in September because I know it was just about the [572] time we started there, in 1909. The well was spudded in in the summer of 1909. I am not exactly positive, but I think it was some time in March. I think their contract called that they had to start in March, and, if I remember right, we spudded in there about 20 feet and then shut down for 30 days or so waiting for money.

(Testimony of E. W. Bailey.)

That was in the year 1909. When we shut down our difficulties were nothing serious. There were no other difficulties, outside of lack of water, and waiting for money. I do not recall how many shut-downs we had. We did not have over 200 barrels storage when the well came in in March, 1910. I said that we were shut down at different times when we were getting water from the Brookshire line, but never more than 12 hours. Not that I remember. I don't know that the Majestic was on the Brookshire line. I know in a general way where the Majestic is. From the location of the pipe-line and of the lands of the two companies, I would say that the Mays would receive the water first through the Brookshire line. These times when we shut down it was because there was no water in the line.

Q. And if the Mays was compelled to shut down and the Majestic, farther away in supply than you were, you must have been compelled to shut down, must you not?

A. Well, of course, I should say that the Mays would get the water first, but I don't know.

Q. Well, did the Mays have storage as big as the Majestic, do you know?

A. I don't know what the Majestic had. The Mays property had 200 barrels storage.

Q. If the Mays was shut down for 12 hours, and it is the one that gets the water first, the only way the Majestic could possibly avoid getting shut down from the same cause would be by greater [573] storage capacity, would it not?

(Testimony of E. W. Bailey.)

A. Well, that two-inch line might have been full of water, you know.

Q. Were you not on the two-inch line?

A. Yes. But I mean on beyond the Mays.

Q. Oh, it might have been full of water after it passed the Mays? A. Yes, sir.

In reply to your inquiry as to how long that water, if the line was full of water, would last to carry on operations in drilling a well, I would say that it doesn't take much water to run a boiler, and a person could go ahead drilling—without putting water in the well you can run in at least three or four days; but the minute you are out of water you must shut your boiler down. I don't know how long the water that could have possibly been in that 2-inch pipeline between the Mays and the Majestic would have run a drilling rig. I don't know how much storage the Majestic had. I don't know whether water would gravitate through this two-inch line or not. If a person could get it all out and the Majestic was two miles away from there, you could figure up how much water they could get. I don't know whether the water would gravitate down to the Majestic or not.

I know about the drilling of the well on Section 28. I do not know as a matter of fact that that casing that well was frozen on account of lack of water and the casing lost, in September, 1909. I don't remember just when that well was drilled on 28. I don't know that that well was drilled to a depth of about a thousand feet, and that I then ran out of

(Testimony of E. W. Bailey.)

water and lost that string because I did not have water. There was only one well on the southeast quarter of 30 in 1909. The casing was lost in that well, but not on account of shortage of water. I don't know that [574] there was a casing lost in July or August, 1909, in that well. It is possible that we landed the first string of casing along in that time—stovepipe. I was superintendent of the Mays Company at that time. I know Mr. A. G. Wilkes. He was connected with the oil company at that time. I do not remember of having made any reports to him concerning the lack of water. I don't remember making any. I do not remember that I did not make any. I have no recollection as to whether I made any or not. I don't remember having discussed that situation with him and having made such report. I do not know of any application being made by Mr. Wilkes to the Santa Fe for water. The Mays line did not tap the main Brookshire line between the Brookshire and the Majestic. It tapped the main line between the Stratton Water Company and the Brookshire, just about half way. We tapped the line ahead of where it reached the Brookshire property. I said that although we tapped the line ahead of where it reached the Brookshire we were shut down a number of times, but never longer than 12 hours. We were not shut down very many times, but there were times we were shut down.

Redirect Examination.

(By Mr. HALL.)

I did not make application to the Santa Fe people

(Testimony of E. W. Bailey.)

during 1909 for water with which to drill this well on Section 30. Mr. Wilkes never instructed me to make application to the Santa Fe for water to drill that well in 1909. There was no necessity to make application to the Santa Fe for water to drill that well with.

(Witness recalled in rebuttal on behalf of the plaintiff.)

Redirect Examination.

(By Mr. HALL.)

I said yesterday on my direct examination that I lost a string of casing in the southeast quarter of Section 30. By the expression "lost a string of casing," I meant we carried it as far as we could and it got caught and we had to put in another [575] string. I did not intend to mean that we lost the hole or had to drive through the casing, or anything of that sort. We carried the pipe as far as we could, and it would get tight, and we lost it, and we had to put in another string inside. It didn't stop the drilling.

Recross-examination.

(By Mr. MORRISON.)

Mr. Sherman, who was connected with our company, was the bookkeeper. He was not in the office in the field in 1909. He must have become connected with the company some time in 1910. I don't think he was there in 1909. In drilling a well we usually endeavor to get down as far as we can with the larger size casing. By losing a string of casing, as I have testified, does not prove injurious to the well. We

(Testimony of E. W. Bailey.)

always try to carry the string of casing as far as we can, unless it is a water string—we have a certain place to land that. We usually desire to pick out the place where we land the casing in order to better shut off the water. If you lose a string of pipe before you get down deep enough to shut off this water the chances are gone on that string. If it was frozen up tight you couldn't go ahead with it. You would have to leave it just where it was.

Thereupon by stipulation of counsel for the respective parties, the testimony of E. W. RANDOLPH, given in the suit of United States v. North American Oil Consolidated et al., No. A-48—In Equity, in the Southern District of California, was read into the record in this cause on behalf of the plaintiff, which said testimony is as follows:

Testimony of E. W. Randolph, for Plaintiff (In Rebuttal).

E. W. RANDOLPH, a witness called on behalf of the [576] plaintiff, in rebuttal, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is E. W. Randolph. I reside on the property of the Boston Pacific Oil Company at Taft, California. I am superintendent. I have been engaged in the oil business in the North Midway field in California since December, 1908. I was employed by the Union Oil Company on or about February, 1910. I was working at that time on Section 34,

(Testimony of E. W. Randolph.)

Township 31, Range 23. They were drilling on that property at the time I was there. I went there, as nearly as I can remember, February, about the 25th, 1910; somewhere along there. I was there, as nearly as I can remember, about a month or six weeks. At the time we got the well rigged up we started drilling. I think we started to spudding in about a month after I went there. The supply of water they used in that drilling came from the Stratton Water Company. I couldn't say positively whose lines of pipe it was they used down to the Stratton Water Company, but I think the line we used to the well on the property was the Union Oil Company's line, and it was laid at that time. After they spudded in that well I remained until we landed our first string of stovepipe. That was about a week or ten days and at a depth of 460 feet, as nearly as I can remember. We had no other source of supply of water than that which came through this water line from the Stratton Water Company. We had no storage there for storing up water. We had some trouble on account of the supply of water. We would just be out of water for a period of time, right along continually. I don't remember what period of time we would be out of water. As near as I can remember, probably from four to six hours time would be about the longest. I couldn't say positively. According to my judgment, I was under the impression [577] that the real cause of losing the casing as soon as we did was that stoppage in water supply. We did not have to start in a new hole on ac-

(Testimony of E. W. Randolph.)

count of the lack of water supply. We had no storage. Simply took it direct from the line.

Thereupon by stipulation of counsel for the respective parties, the testimony of CHARLES E. WILCOX, given in the suit of United States v. North American Oil Consolidated et al., No. A-48—In Equity, in the Southern District of California, was read into the record in this cause on behalf of the plaintiff, which said testimony is as follows:

Testimony of Charles E. Wilcox, for Plaintiff (In Rebuttal).

CHARLES E. WILCOX, a witness called on behalf of the plaintiff, in rebuttal, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is Charles E. Wilcox. I reside in Kenne, Kern County, California. At present I am a rancher. I have been engaged in the oil business. I was employed by the Canadian-Pacific Oil Company in 1909, in the North Midway field, California. I was employed in the capacity of driller. I commenced to work for the Canadian-Pacific along about the middle of December, 1909. I am familiar with the well that was started by the Canadian-Pacific on the northwest quarter of Section 4, Township 32, Range 23. It was started in December, 1909. They used water in drilling that well. I believe the water came from the Stratton Water Company. I believe it came through the California Midway line. I con-

(Testimony of Charles E. Wilcox.)

tinued to work for the Canadian-Pacific until about the 1st of March, 1910. At that time the well had not been put on production. There had been no discovery of oil in it. When I left there [578] in March, 1910, it was about 880 feet deep. During the time I was there, from the middle of December, 1909, until March, 1910, we did not have any trouble with the supply of water we had for drilling purposes. I was at the well known as the Cleveland well several times during the time I was on the Canadian-Pacific. It was right east of the Canadian-Pacific. They got their water off the same line as we got our water. They were not drilling the Cleveland during all the time I was there on the Canadian-Pacific. They shut down some time along about the 1st of the year, I believe, or shortly afterwards, and moved the rig and started a new well. I do not know of my own knowledge how they happened to lose that hole. I do not know anything about the sufficiency of the water supply that they had for drilling purposes on this Cleveland well. I know the California Midway was drilling a well on the southeast of Section 32, 31-23, at the time we were working on this Canadian-Pacific. I believe they got their water from the Stratton Water Company, through the same line we were connected on. I don't know anything about their difficulties, if any, with the supply of water. I believe they were drilling all of the time from December, 1909, to March, 1910. We had storage tanks at the well on the Canadian-Pacific. It was either a 1,000 barrel or 1,200 barrel tank, I don't know

(Testimony of Charles E. Wilcox.)

which. During the time I was drilling that well I did not have to shut down on account of lack of supply of water.

Cross-examination.

(By Mr. WHEELER.)

I went there in December, 1909, and was there until March. At that time they were drilling just one well on the Canadian-Pacific. I think we got down to 880 feet. I spudded in while I was there. I went on to the property, I believe, the 18th day of December, 1909, and we waited some time for a boiler, I believe, and some tools, and as soon as we got those [579] we rigged up and spudded in. We spudded in some time in January, some time along in the middle of January, I believe. I couldn't say. And when we got down 880 feet we left the property. During that period of time we were getting water from the line that came from the California Midway past this property and went on down to the Cleveland. I believe Mr. H. H. Blood made the arrangements. I didn't make them. I know nothing at all about the terms upon which that order was procured. We used more water in drilling that 880 feet than in any other part of the hole. I mean, we used more water for the first 380 feet. I think we got the surface water at 380 feet and used that afterwards. It took us not over a week or ten days to get down that depth. I have no personal knowledge of what the troubles or difficulties may have been with regard to the other drilling that was going on there. I don't think they all were very short of water, because they

(Testimony of Charles E. Wilcox.)

were always working pretty steady. I wouldn't say that they were short of water. I saw them working. I saw them working night and day. I was there at all times. I couldn't say that they worked all night and all day, were running continuously, but I would say they worked very steady. I know that work was being done on those claims. What their personal difficulties may have been with water, I don't know. As a matter of fact, I don't know what their private business was or what their private difficulties may have been with their supply of water. We spudded in with 16-inch stovepipe casing. We lost the 16-inch along about 600 feet, I believe, something over 600, and we put in 14-inch inside of it. We didn't lose any casing. Well, we did lose the 14 inch at 880 feet. That is, we didn't get it through the wash. That is where we left it. I didn't know of personal encounter between Mr. Blood and Mr. Lamb on account of the shutting off of water between one claim and the other. There [580] were no difficulties to my knowledge with water being shut off between one claim and the other while I was there.

Redirect Examination.

(By Mr. HALL.)

After we encountered this surface water at 330 feet we did not continue to use water out of the California Midway line to drill with. We used it only for boiler purposes. When I said we lost a string of casing, I meant the casing simply filled up and we couldn't carry it any further. The freezing of that casing at that time was not in any manner due to a lack

(Testimony of Charles E. Wilcox.)

of water supply. In drilling wells in that field, you couldn't help using the surface water. After we encountered that surface water we didn't have to use any more water in the hole to drill with. The Cleveland well was a little over a quarter of a mile from where I was drilling on the Canadian-Pacific. There was nothing which obstructed my vision of the operations on the Cleveland well. I could see at all times. There was nothing to obstruct a man's vision from seeing operations on the California Midway wells.

Thereupon by stipulation of counsel for the respective parties, the testimony of BENJAMIN K. STROUD, given in the suit of United States v. North American Oil Consolidated et al., No. A.-48—In Equity, in the Southern District of California, was read into the record in this cause on behalf of the plaintiff, which said testimony is as follows:

Testimony of Benjamin K. Stroud, for Plaintiff.

BENJAMIN K. STROUD, a witness called on behalf of the Government, having been first duly sworn, testified as follows: [581]

During the year 1909 I would not say that there was any source of supply for water for drilling and boiler purposes in the vicinity of Section 2. The nearest railroad to section 2 at that time was about three miles south. During 1909 we were getting our supply of water for drilling on Section 30 from tank-cars, cars hauled out by the railroad. It was less than a mile to our main tank on Section 30 where we were drilling from the station where the tank cars

(Testimony of Benjamin K. Stroud.)

were side-tracked and the water unloaded. I think the Pioneer Midway Oil Company was paying 3¢ per barrel for water delivered at that siding. The water came from Kern City, near Bakersfield. Our company drilled two wells on Section 30 with water secured in that manner. They were drilled until they were brought in as producing oil wells with water that was purchased from the tank-cars. We supplemented that water on one occasion, I remember, with water from the Stratton Water Company. I think that was only for a few days. The source of supply of the Stratton Water Company during 1909 was on Section 7, in township 32, range 23. I have no knowledge of any water pipe-line in the vicinity of Section 2 in 1909. I have no knowledge that the pipe-line was extended to Section 2. I don't know from what source the water was obtained in 1910 when the wells were drilled on Section 2. In the early days I knew of people hauling water in tank wagons from near Buena Vista Lake to Section 26, township 32, range 23. I was told by my father that he hauled water to Section 26 and (indicating) they went over this range of hills there. They had enough water to do drilling during daylight by having a great many teams hauling water. They hauled it ten miles. The lake that I refer to is Buena Vista Lake. I think it was in 1901 or 1903 that my father hauled from Buena Vista Lake to Section 26, township 32, range 23. When we were drilling on Section 30 in 1909 the principal source of water [582] supply was from these tank-cars. The nearest point from Sec-

(Testimony of Benjamin K. Stroud.)

tion 2 to the railroad in 1909 was about three miles. There was a gradual slope from Section 2 to the railroad. It was practically level from Section 2 to the railroad. In 1909 there were no developments being carried on on the lands within the vicinity of Section 2—within a radius of a mile or so of Section 2. During 1909 I knew of no wells that were being drilled with water that was being hauled out from the railroad in tank wagons from the tank-cars at the railroad. There was no water hauled from the railroad by wagon. We were piping the water from the railroad to Section 30. I don't know just what companies were using water in the same way we were. I knew of some companies down here near Taft. They had a water supply here—used to pump the water up to Section 22 and 23, about a mile or a mile and a half from the railroad. Those are the only ones I have positive knowledge of using water from tank-cars. There may have been others. I did not make any effort during the time from the middle of August, 1909, to get water and bring it on Section 2. I had no instructions from Mr. Strassburger or any other official of the Pioneer Midway Oil Company to procure water to commence drilling on Section 2. I was told that they had made efforts to get water on Section 2 during 1909. Mr. Strassburger told me—I don't know with exact reference to the water situation—but he told me that he intended to develop Sections 2, 12, and 18. I don't know that anything was said about the exact date, but my impression was that we were to drill those sections, some time in the

(Testimony of Benjamin K. Stroud.)

future. I don't remember that we ever discussed any specific efforts Mr. Strassburger had made during the year 1909 to get water on to Section 2 for drilling purposes. In drilling on Section 30 I suppose we were averaging 400 barrels of water a day—something over a tank-car of water. I think a tank-car holds [583] about 300 barrels of water and we used about three cars every two days for the two wells. I have been engaged in drilling oil wells about twelve years. I have been a practical oil driller. In my opinion, it would have been possible, with a certain amount of difficulty, in the year 1909, to have piped water procured from tank-cars from the railroad to Section 2, assuming that there was a supply of water at the siding. It would not have been at all practical to have hauled water out from the siding to Section 2. The cost would have been prohibitive in the first place, and in the second place it takes a great deal of water—would have to keep a good many teams on the road; and when you start one of those deep wells you have to keep going. You can't shut down at night as they did in Section 26 in 1901. You could do that in shallow formations. The wells on Section 26 were 1200 feet deep, but they stood up. The objections to hauling water out in tank wagons were the cost and also the question of supply. My father estimated the cost of hauling from the lake up there at 80 cents a barrel. The contour of the country was such that you could haul the water without difficulty if you had plenty of wagons and plenty of means and if you had an adequate sup-

(Testimony of Benjamin K. Stroud.)

ply of water. Section 2 is about ten miles from Buena Vista Lake. There was not to my knowledge any water supply company taking water out of Buena Vista Lake in 1909. There was water in Buena Vista Lake during that year. I had no trouble with other people trying to jump Section 2 during the year 1909. There was considerable jumping going on on other lands out there by other parties in 1909.

I have heard of the Withdrawal Order of September 27, 1909. I heard of it directly after it was made, saw it in the papers. I heard of it within a few days after the order was made. I no doubt discussed the order with Mr. Strassburger or other officials of the Pioneer Midway Oil Company, but I don't remember what was said. [584]

Q. Was it practically possible to commence drilling in view of the conditions then existing in obtaining water?

A. I can only tell you what my experience was in Section 30. There we had considerable trouble in getting water at different times. We were frequently shut down on the wells we were then drilling for lack of water. We received the water in the tank-cars in which oil had been shipped out from the field. Those oil cars were taken back to Kern and there loaded with water, and all the oil cars would have from a foot to two feet of oil in the bottom of them, heavy oil, and this oil of course, laying in the car, would cause us a great deal of trouble in clogging up the pipe-lines. We would frequently have to cut

(Testimony of Benjamin K. Stroud.)

the lines and build fires around them so we could get the oil out. There were many days when the railroad people didn't shunt the cars into our siding properly. The siding we had there was also used by the Santa Fe Railroad Company for the loading of these oil tank-cars, and our cars had to be shunted in ahead of them and very often this was not done, causing us all sorts of trouble.

Q. In your opinion as a man skilled in drilling oil wells, was it practicable to obtain water from the railroad company and use that water in drilling the wells on Section 2 in view of the conditions existing in the year 1909, in view of the unwillingness of the railroad to perform the service, the topography of the country, available supply and the necessity of drilling a deep well?

A. Yes, we did contemplate a deep well. I supposed it would be very deep. If we had to depend upon our supply from the railroad, we would have had to install a boiler right at the railroad for the purpose of forcing the water through, as well as a water-tank. And then we would have to have laid a pipe-line through the country, and it all depends upon how much water we could have [585] gotten from the railroad. According to our experience on the Pioneer Midway there, I think we would have had considerable trouble.

Q. Did you regard it as a practical, business-like method?

A. I don't think it would be because we certainly had enough trouble with the Pioneer Midway on the water situation.

(Testimony of Benjamin K. Stroud.)

Q. What happens when you are drilling deep wells when you are short of water?

A. It is a very risky proposition. If you have not enough water to go on, you might stick or lose a string of pipe. You are carrying the casing through the formation and, of course, this continually falls in and if it caves suddenly, it is liable to freeze or stick so that it cannot be moved. In that case, you would have to insert a smaller string of casing and proceed with that. If it happened often enough, you might never reach the oil sands. On the Pioneer Midway Section 30, we had a great deal of trouble from lack of water.

Q. Just explain how the water is used to keep the hole clear.

A. The weight of water inside the pipe holds the formation back on the outside of the pipe and in that way, we keep the formation from caving in. If the water in the hole starts to go down in the inside, the formation drops down on the outside.

Q. It is an extremely hazardous proposition to begin drilling a well without a steady supply of water on hand?

A. Yes. You might drill for days and not have that trouble and then strike a formation that might require a constant stream of water.

Q. Was there any source from which water, in adequate quantities, could have been obtained for the purpose of drilling on section 2 in the year 1909?

A. There was the Stratton Water Company. Previous to having [586] charge of the Pioneer prop-

(Testimony of Benjamin K. Stroud.)

erties, I had charge of two smaller properties on Section 15, 32-23, and Section 21, 32-23, and we were shut down there for three weeks at a time for lack of water.

Q. Were the Stratton Water Co. willing to sell you water?

A. We did use some water from the Stratton Water Company on the St. Lawrence Section. It was very uncertain. It was the worst water in the field. We were continually burning the boilers with it. We could only run a boiler five days and then have to shut down and clean the boiler. The Santa Fe also had a water supply in there from McKittrick, piping fifteen miles from their wells, but that was also very uncertain. The Pioneer tried to get water from them, but could not. They wanted twenty-two cents a barrel for it. They did supply a few of the companies in the field, some of the older ones, but they refused to supply the new companies.

Q. You know of no other available source of water supply?

A. The Standard Oil Company had a pipe-line in there, but they would not supply water to anybody. They did not want to make themselves a public service corporation of water.

Q. As a matter of fact, you were having an exceedingly hard time to get sufficient water to keep the Pioneer and St. Lawrence wells going on Section 30?

A. Between our labor troubles and water troubles, we were having a pretty hard time out there.

(Testimony of Benjamin K. Stroud.)

Q. The water question is one of serious moment at all times?

A. It was the thing that gave me more anxiety than any other one, with the possible exception of the labor.

Q. In your opinion as a competent oil man, knowing the existing conditions as to the scarcity of water, if you had located Section 2 for oil and had constructed your derricks and were ready to proceed with drilling, would you deem it practical to proceed [587] with the drilling?

A. In view of our experience on the Pioneer Midway, it would be a hazardous undertaking.

Q. You consider yourself a competent oil man?

A. Yes.

Q. You would not undertake the drilling of wells with the uncertain water supply at that time?

A. I don't think I should.

Q. Was there anything in the nature of the work that was being done by the Pioneer Midway Oil Company on Section 2 which made you doubt in any way the good faith of the work that was being done in actual drilling?

A. No. We had a substantial type of derrick up there and my understanding from Mr. Strassburger—when he hired me was that all those sections were going to be drilled.

Q. There was nothing in the nature of the work, either that had been done or was being done under your direction, which gave you the slightest reason to

(Testimony of Benjamin K. Stroud.)

suspect that it was not the *bona fide* intention of the company to drill?

A. We didn't skimp the work at all.

Q. The work that was done was all that could be prudently and reasonably done at the time you did it? A. Yes.

Q. Did a man live on each one of those quarter sections in Section 2? A. Yes.

Q. At all times?

A. Yes, while I was there. They did such work as could be done prior to the obtaining of a water supply.

(By Mr. LEDERMAN.)

Q. Was there a camp established there?

A. Yes. We had a commissary there on the north-east quarter. [588]

Redirect Examination.

(By Mr. HALL.)

Notwithstanding all of these difficulties which I have enumerated, the work on Section 30, conducted by the Pioneer Midway Oil Company in 1909, progressed until oil was finally discovered on that section. We meet a great many difficulties in the construction of an oil well. In those days we didn't know the territory as well as now and were in difficulty about fifty per cent of the time. It was the duty of a competent superintendent to meet and overcome those difficulties, and in the drilling of the wells on Section 30 I finally succeeded in getting oil. The well on Section 30 came in in April, 1910. It was started in June of the year before. In all min-

(Testimony of Benjamin K. Stroud.)

ing operations, both for oil and for the metalliferous ores, superintendents of properties meet with difficulties. All mining, in my opinion, is a very hazardous procedure which is filled with difficulties that must be met and overcome by the superintendent. When we were drilling on section 30 for the Pioneer Midway Oil Company we met difficulties and overcame them. In my direct examination I said that it would take from twelve to fourteen days to actually get ready for drilling on Section 2, assuming that a water supply was there. If for any reason I had known at that time that the right of the Pioneer Midway Oil Company to the section in question was likely to have been cut off or lost to the company for any reason whatever unless drilling had been commenced upon the property on or before the 27th of September, 1909, I should have taken orders from Strassburger.

Q. Provided that you were then, in the middle of August, 1909, claiming the right to Section 2 and you had known that there was a possibility of you having lost your right personally to the section if you did not commence drilling an oil well on each one of the quarters prior to September 27, 1909, what would you, as a [589] careful competent oil man, have done?

A. I think I should have tried to start drilling there under some conditions.

Q. If your right depended upon the securing of water by hauling it out in tank wagons, would you have adopted that method?

(Testimony of Benjamin K. Stroud.)

A. Had I considered the land worth that effort, I should have done so.

Q. If you had considered the land worth the effort and you thought that your right was about to be foreclosed, would you have started a pipe-line from the railroad to pump the water out to the section, assuming that you could have gotten water in tank-cars at the railroad? A. Yes, I probably should.

Q. How long would it have taken to have laid a pipe-line from the railroad to Section 2?

A. About five days.

Q. Provided you could get pipe? A. Yes.

Q. How long would it have taken to install a pump to have pumped the water?

A. At least 5 or 6 days.

Q. The laying of the pipe-line and the installing of the pump might have been carried on simultaneously? A. Yes.

Q. If you had had the material and the money in 1909, you might have had a pipe-line and a water system established there in anywhere from 5 to 15 days. A. Yes, I suppose so.

Q. Would it have been possible in 1909 to have laid a pipe-line for a water supply from Buena Vista Lake to section 2?

A. It would have been possible just as it is now.

Q. They get water from Buena Vista Lake to section 2, do they not? [590]

A. They have wells there. They get water from the wells. I think the Honolulu Consolidated is getting water from the lake.

(Testimony of Benjamin K. Stroud.)

Q. When was the well in Section 2 drilled?

A. I think the well in Section 2 was put on in 1901.

Q. You referred a moment ago to section 2. You mean Section 2 which borders on Buena Vista Lake?

A. Yes, 32-24.

Q. Do you know whether the water supply for the drilling of the oil wells on Section 2, the one involved in suit, was eventually obtained.

A. I do not. After giving up charge to Tryon, the superintendent that actually started development, I don't know what happened on the section. . . .

Q. Suppose that on the 15th day of August, 1909, you were in possession of the property in question and it was in the condition it was in when you went there, and someone else had also a location on it and was attempting to discover oil prior to the time you made a discovery, would you have changed your methods of development in order to make a discovery prior to the intruder who was there attempting to make a discovery,—that is to say, there was a co-occupation, to see who would be the first discoverer of oil and have the first valid location?

Mr. BOWIE.—Objected to as hypothetical.

A. Under those conditions, I would have hauled in drilling machinery and actually proceeded with the work of spudding in.

Q. What would you have done for a water supply?

A. I would have gotten it the easiest and quickest way I could, if I could get it at all.

(Testimony of Benjamin K. Stroud.)

Recross-examination.

(By Mr. BOWIE.)

I understand there was a well sunk on that [591] property previous to this time in the hope of getting water. I never was out to the well, but simply heard of it. I heard it was on Section 2 and a failure.

Redirect Examination.

(By Mr. HALL.)

I don't know by whom that was drilled. I didn't visit that well. I think it was about six or seven hundred feet deep. I don't know where they got the water to drill that well, unless they got it from the Standard Oil Company. I don't know who did that drilling. I don't think it was the Pioneer Midway Oil Company. I don't think Mr. Strassburger ever talked to me about that well that was sunk in the attempt to get water. I don't think we ever talked that over. [592]

Thereupon, under stipulation of counsel, the testimony of R. H. BARE given in the suits of United States vs. Brookshire Oil Company et als., Nos. A.-34, A.-35 and A.-36, in the Southern District of California, was read into the record in behalf of the plaintiff and is as follows:

Testimony of R. H. Bare, for Plaintiff (In Rebuttal).

R. H. BARE, a witness called on behalf of the plaintiff, in rebuttal, having been first duly sworn, testified as follows:

(Testimony of R. H. Bare.)

Direct Examination.

(By Mr. HALL.)

My name is R. H. Bare. I live at Maricopa. I am a driller. I have been engaged in drilling oil wells about 25 years, in Pennsylvania, Texas and California. I have worked in the oil fields of California about 15 years. In the year 1909 I was working at Edna, California, San Luis Obispo County, and on the 1st of August I left there and came to the Midway field. I was employed by the Majestic Company in the Midway field. I commenced work on well No. 1, on the northwest quarter Section 23, 31-22. The well had not been spudded in when I went to work there in August. It was spudded in on or about the 10th day of August, 1909, and I continued to work on that well about 20 days. There was a discovery of oil made in it while I was working on it, at a depth of about a thousand feet. I know that oil was produced for sale commercially from this depth in that well, up to about the 1st of December it produced at the rate of about 30 barrels a day and was used there locally and tanked on the property for the different wells. The water that was used in the drilling of the Majestic No. 1 came through what is known as the Brookshire water line from the Stratton Water Company. During the time I was working there, from August on to discovery, there was not any shortage in the supply of water for drilling purposes, not to the best of my knowledge. [593] We took care of our water supply at that time by a 1500 barrel tank.

(Testimony of R. H. Bare.)

We had a thousand barrel tank, so it was said, and a five hundred barrel tank, so they told me. I don't know the dimensions of the tanks exactly, but approximately about 1500 barrels storage. We did not have any shut-down from the time the Majestic well No. 1 was spudded in until this discovery of oil, on account of lack of water. When the water came out of the water line it went into the storage, and when we wanted to use it for drilling we took it from the tanks, from the storage. During that time I did not notice any material diminishing of the supply of water contained in those two tanks. We had approximately about a thousand barrels of water in storage there at all times. I drilled eight wells in that same section of ground besides the Logan. The record shows that we started to spud in the Logan on the 19th day of October, 1909. We got the supply of water for Logan No. 1 out of what is known as the Brookshire water line. It took us about 45 days to drill Logan No. 1. It made a very heavy oil in commercial quantities, about 1,385 feet deep. We did not have any trouble with our water supply during the drilling of Logan No. 1. We were not compelled to shut down at any time during those 45 days on account of lack of water supply. The next well that I drilled in that vicinity was the Majestic No. 2. It was started on or about the 10th of January, 1910. We got the water that was used in drilling Majestic No. 2 from what is known as the Brookshire water line. We used water from that line during the entire time Majestic No. 2 was being

(Testimony of R. H. Bare.)

drilled. We did not have any trouble from lack of supply of water during the drilling of that well. In the Majestic No. 2 we had discovered and produced oil in May, 1910, at a depth of about 1,400 feet. I knew a well on Section 23 known as Gem Well No. 1. I worked on that well. It was started on or about the [594] 15th day of January, 1910. It was brought in as a producing well, but I do not know the depth. It was brought in about the same time—or a few days after we finished up Majestic No. 2. I am satisfied they got the water with which to drill Gem No. 1 from the Chanslor-Canfield line or from the Santa Fe. I know that they hitched onto that line and had a pipe across our property. I never heard of them having any trouble with Gem No. 1 on account of lack of supply of water.

I have had experience with the freezing of casing in the drilling of an oil well. The freezing of casing is mostly due to heaving sand, or shifting sand. Heaving sand is the principal cause, I think, and the formation in general. Even though there is an adequate supply of water for drilling purposes, oftentimes it will freeze in a very short time so that it is impossible to move it. Oftentimes in 15 minutes. It doesn't make any difference about the supply of water at all whether a pipe is freezing. Of course oftentimes it is caused from the negligence of the man operating the well. We always blame ourselves, anyway. That territory was very easy locality to take care of a pipe and keep it moving. A very easy locality. We shut down over Sunday

(Testimony of R. H. Bare.)

a number of times on the Majestic. We would move our pipe, generally pull it up the length of a joint, that is, moving it past the longest joint of pipe, in a string, which might be twenty-three or twenty-four feet; generally we would move it up twenty-five feet, letting it back again or leaving it stand. It is not a fact that freezing is due more to lack of movement in the pipe than to lack of supply of water in the hole. It is according to the conditions an awful lot. You take that territory there, we had a dry hole until we got the first discovery, and it was not necessary to carry water there at all, and it made drilling so [595] much easier to keep a dry hole, and we had no casing trouble until we got to the oil sand, and then we didn't have any casing trouble with the exception of a few boulders. When you pull up the pipe, as I described a minute ago, it does not take as long to clean that hole again as it did to originally drill it. It very seldom caved to speak of. That is, if we were in any of the strata above the oil sand. Very little cleaning out. I have drilled nine wells in that particular locality. They are as follows: The first was No. 1 Majestic; the second was the Logan; the third was No. 2 Majestic; the fourth was No. 5; the next was No. 6; and the next was No. 9; the last was No. 10. That was Tumador property afterwards, you understand. They took that over, I think, in April, 1911.

Cross-examination.

(By Mr. KAETZEL.)

I am at present engaged in drilling for the K. T.

(Testimony of R. H. Bare.)

& O. Company in Maricopa. I had charge of the Tumador property approximately about three and a half years. I was superintendent for the Tumador. The rest of the time I have been employed as a driller. I drilled first on Majestic No. 1, started on or about the 10th day of August, 1909. That well made a discovery of oil while I was drilling. It was not finished. We produced oil at about a thousand feet or a little over for up until about the first of December, 1909. They went back and deepened it. They made this discovery on about the 1st of September; possibly a few days before. It was the latter part of August. I went from that well to the Logan. The records show that we started to spud in on the 19th day of October, 1909, on the Logan. We drilled on that well up to the first of the year. We had a well that would make very heavy oil in commercial quantities at about 1,335 feet. [596] We made that discovery along about Christmas time, about the 25th of December. The next well I drilled was No. 2 Majestic. We started that on or about the 10th day of January, 1910. We drilled until about the middle of April, had a 60 barrel well at about 1,400 feet or a little over; about the middle of April, 1910, we made that discovery. The next well I drilled was Majestic No. 3. I don't remember when we started the Majestic No. 3, but it was in the summer. We made a discovery in that well. I can't remember the date. It may be possible that I testified on my direct examination as to the date, but I don't remember it just now. I don't remember

(Testimony of R. H. Bare.)

the time we made the discovery in No. 3, or what time we started to drill it. I have not had access recently to the records of either of these companies, not within the last three years. I got these dates from personal memory. I remembered them the best I could. I haven't stated positively that any of the dates are correct; I say on or about, if you will notice. I am testifying from recollection; absolutely no one has told me about these dates. It is possible that I have had a conversation with Mr. Kerran about this case. I have had conversations with quite a number of men in regard to that particular property. I couldn't possibly state now whether I had any with Mr. Kerran. There are several that I met that I don't know their names. It is possible that I know Mr. Kerran, if I met him; but I don't know his name. I don't know whether I know him or not. It is quite likely that I have met that gentleman (indicating Mr. Kerran), but I don't recognize him. I don't remember whether I have seen him or not. I don't know whether I have talked with him about this case. I think I know Mr. Favorite. I am not sure I do. It is possible that I have talked with him about this case. I am not sure whether I have or not. I am not very well acquainted with Mr. Hamel. Possibly I know him [597] when I see him, but I don't know his name. That is the first time, probably, that I have heard his name mentioned. I have seen the gentleman sitting at your right since I have been here. It is possible I have seen the gentleman before I came here. I don't

(Testimony of R. H. Bare.)

know whether I ever met him before I met him here. I saw him here since I came to the city. I am pretty positive I have not talked very much about this case. I am not sure whether I talked with him at all about it. I can't recollect all the people I talked to on this proposition. It is quite likely I have talked with someone in the Government employ about this case before I came to San Francisco. I know I have. I don't know any of their names. I could possibly recognize a few of them. None of them told me any of these dates. The only man that told me any dates at all was a man that is secretary of the General Petroleum Oil Company, a man by the name of Stevens. He brought me some records that were supposed to have been—to have my signature to them, that I never signed at all. It was taken care of by Mr. Johnson, all the records. Also the records of the Majestic up to the time I took charge of them. That was in the latter part of May of this year. He just showed me the dates that we started the Logan Oil Company. He showed me the date off of these records. That is the only dates I am positive about. Then I remember that date particularly of my own recollection. That is, from May to this time I remember positively. The other dates I remember accurately, since 1909 and 1910. I kept the tour reports of those wells after I took charge of the Tumador Oil Company. I took care of the logs at that time, and the reports. I didn't keep any of the reports of the Majestic, Gem or any of these other companies. I turned them back to the company when I got through

(Testimony of R. H. Bare.)

there. In that immediate neighborhood we didn't use water to keep the casing from freezing up until we got the oil sand. [598] Of course it is possible other people did. I am just speaking for ourselves. I am speaking merely of our conditions and the way we found them. That territory varied from about 1,500 to about 1,950. It is not what we would call deep territory. It was just about ordinary. I have been a driller for a long time. It is my testimony that water was of no benefit at all in preventing casing from sticking in that neighborhood up to the time we got to the oil sand, about a thousand feet. It was not necessary to put any water in the hole at all, that is, except for drilling purposes. In the case of heaving sand, the water is a big benefit at times in preventing the casing from freezing. We didn't have any heaving sand in that territory until we got to the first oil sand. The reason I say water was of no benefit was simply with reference to this particular well where there was no heaving sand. If there is any heaving sand encountered then water is of great benefit. It is practically essential to safety in case of heaving sand. Yes, we had heaving sand in the wells which we were drilling on the Majestic No. 1 camp; that oil sand will heave as a rule in that territory. The first well that I drilled was the Majestic No. 1. I commenced that on or about the 10th day of August, 1909; we drilled there 20 days. We encountered heaving sand just where we got the oil sand, and that is where we put it to production. We did not use water to keep the casing from freezing.

(Testimony of R. H. Bare.)

We set 8-inch pipe in already perforated and lifted the 12½ and let it produce. I suppose there was considerable demand for water on that particular well at that time. I don't know what the conditions were outside, but we got water, and it appears there were a great many more people starting up at that time. There was no demand for water at that well. The demand for water at that well was not out of the ordinary. Possibly about 65 or 70 barrels a day. That was about all we required. The next well I [599] mentioned was the Logan well, which was drilled to a depth of 1,325 feet. I spudded it in. We got a lot of water sand at a little over 700 feet in the Logan. We did not use any very great amount of water in that well. The well itself made about as much water as was necessary. We did not require very much water outside of the ordinary drilling water, mostly for boiler purposes. We drilled on the Logan until about the last of 1909. Then I went to Majestic No. 2. I spudded in that well about the 10th of January, 1910. We encountered considerable heaving sand at that well after we got through the oil sand on top. We figured we would drill that well through the water strata—we got a big water strata at about 1,800 feet which we afterwards capped off. We reached this 1,800 foot depth about the first of July, 1910. Up to the time we encountered this depth in Majestic No. 2, we had been using possibly 75 barrels of water a day. We got water for this well out of what is known as the Brookshire water line. To the best of my knowledge

(Testimony of R. H. Bare.)

that line came from the Stratton Water Company. The first well was the Majestic No. 1. They pumped the oil produced from that well. The production was from the first sand. I think that oil was about 17-gravity. We wouldn't call it very heavy oil at that time, but it was considered very good. Majestic No. 1 was on the northwest quarter of 23, 31-22.

Redirect Examination.

(By Mr. HALL.)

I would place the daily average amount of water required in the drilling of wells in that vicinity at between 90 and 100 barerls under all conditions. That is just an estimate. I am not very familiar with the drilling of the Brookshire wells. I know they were in operation when I went there and I was acquainted with some of the men, but I don't know any of their conditions at all, whatever. [600]

**Testimony of R. H. Bare, for Defendants (Recalled
—Cross-examination).**

R. H. BARE, recalled for further cross-examination by defendants.

(By Mr. MORRISON.)

I didn't work on the Bear Creek property at all. I worked on the Majestic. I couldn't possibly enumerate the wells and tell when each one was started and finished and the depth, with the exception of very nearly the exact dates of Nos. 1, 2 and 3. I can't remember the exact dates. I could give you a very good idea of when they were. I left the employ-

(Testimony of R. H. Bare.)

ment of the company I was working for. I just simply thought it was to my advantage to take a better job. I was not discharged for drinking. There was nothing that I know of said about my drinking during the time I was employed. Nothing at all.

Redirect Examination.

(By Mr. HALL.)

I have worked for the K. T. & O. for nearly two years. I am still working for them. I was subpoenaed from my work down there for the K. T. & O. as a driller to come here and testify. The K. T. & O. is said to be one of the biggest drillers in this territory. I am now in charge of the drilling work for them.

Mr. HALL.—It is also stipulated between Mr. Wheeler and myself that the record might show that Bear Creek No. 1, in the southwest quarter of Section 14, 31-22, was spudded in in late June or early July, 1909, and was finished early in September, 1909, and that that well was drilled with water from the Stratton Water Company through the Brookshire water line.

Mr. WHEELER.—In late June or early July, 1909.

Mr. HALL.—Yes. [601]

Thereupon, under stipulation of counsel, the testimony of T. S. KINGSTON given in the suits of *United States v. Brookshire Oil Company et als.*, Nos. A-34, A-35 and A-36 in the Southern District of California, was read into the record on behalf of the plaintiff and is as follows:

Testimony of T. S. Kingston, for Plaintiff (In Rebuttal).

T. S. KINGSTON, a witness called on behalf of plaintiff in rebuttal, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is T. S. Kingston. I reside at Fellows, California. I am superintendent of the oil property of the Hawaiian Oil Company. I have been engaged in the oil business for 15 years. During that time I have been employed as a driller and superintendent. During the fore part of 1909 I was employed on Section 5 and Section 30 in Township 32 South, Range 23 West. The St. Lawrence property is on Section 5, right south of Fellows. During 1909 I was drilling one well on the St. Lawrence Company's property. The well was commenced in December, 1908, and it was not completed when I left there on August 1st, 1909. We had struck some heavy oil in the well at that time, but were going on down to the lighter oil. During 1909 their source of water supply for drilling that well on the St. Lawrence property was from the Stratton Water Company. We got water from the Stratton Water Company during the entire time I was there up to August 1, 1909. We got all of it except running water. We shut that rig down before I left. The rig was indirectly shut down because of lack of water. The trouble in regard to the water occurred because we

(Testimony of T. S. Kingston.)

didn't have a large enough reservoir or tankage, and the boys working on the well let the water run out and burned up the boiler. They shut the water off at the Stratton Water Company. We used a [602] 100-barrel tank to conserve our supply of water at the St. Lawrence well.

I was also using water on Section 30, where I was drilling for the Pioneer Midway Oil Company. I was drilling on the Northwest and Southwest quarters of Section 30. We started on the Southwest quarter along in January, 1909, sometime, and on the Northwest quarter in May some time. The well on the Southwest quarter had been finished when we started the one on the Northwest quarter, but we had made a discovery of oil. We shipped our water for drilling those two Pioneer Midway wells on Section 30 in tanks from Bakersfield. We got the water out from the end of the railroad to Section 30 through a pipe-line. We shipped one and two tanks of water a day to these Pioneer Midway wells. We ordered the water by telephone from Mr. T. M. Young. He resided in Bakersfield. He had an office in the Land Company Building. I think it was in Bakersfield. He did not have any connection with the Santa Fe Railroad Company or the Sunset Western Railroad Company that I know of. Mr. Young was Secretary of several oil companies, and they organized this little water company to supply water out through the west side, to different companies along the line, and he attended to the loading of the cars in Bakersfield. The cars were loaded in East Bakersfield some place.

(Testimony of T. S. Kingston.)

I do not know the source of supply from whence this water came. Usually we had to telephone Mr. Young two days before we needed a tank of water. We could sometimes get it by telephoning the day before, but they always asked you to give them two days' notice. We had no great trouble in getting our water supply for drilling those Pioneer wells in 1909. We had 2,000 barrels storage. We were figuring on keeping those tanks full. We did not have to shut down during the time I was there in 1909 either one of those Pioneer Midway wells because of lack of a supply [603] of water. It did not require any extra "pull" or extra friendly relations with the Sunset Western or the Santa Fe Railroads or any of the officials that I know of to get that water supply at that time. I didn't make any arrangements with the Santa Fe. It cost about 6 cents per barrel, I believe, to deliver that water to the end of the railroad at Fellows. I think that was it. I am not positive, but I think that was the price. I think the Stratton Water Company was charging 6 cents per barrel at that time. The railroad ended at the town of Fellows in 1909. Where we unloaded our water was right on the line between Section 6 and Section 30, and we had one 500-barrel tank right on the line, and then a 1500 barrel tank down on the corner of Section 30. The first tank I refer to was on the line between Sections 6 and 30, right at the town of Fellows. If we were in a hurry for the water we had a little pump there with a gasoline engine and we shoved it down. But if we had plenty of water down at the lease we

(Testimony of T. S. Kingston.)

let it gravitate down. We never had any trouble in stopping drilling on account of lack of water on this Pioneer Midway well on Section 30. I think the railroad was continued to the town of Shale on the West half of Section 25 in the fall of 1910.

I knew about the Mays well that was being drilled on Sec. 30 near the Pioneer Midway well in 1909. They took water a little time from us, but we couldn't supply them with our system, so they made arrangements with the Brookshire. They got water out of the Brookshire line. The Mays well was not shut down that I know of on account of lack of water.

Cross-examination.

(By Mr. KAETZEL.)

I do not know whether the Mays was shut down for lack of [604] water or not. I was superintendent of those companies in 1909. The St. Lawrence Company procured its water from the Stratton Water Company. That well was one of the nearest wells in the entire field to the Stratton source of supply. It was not over three-quarters of a mile from the source of supply of the Stratton Water Company. The water was shut off from it on one occasion. I said that I did not use any influence or pull to get tank-cars from the Santa Fe Railroad. I knew Mr. Strassberger. He was the managing director of the Pioneer Midway Company. I know that he leased a lot of land to the Chanslor and Canfield, which is the Santa Fe Railroad. I do not know as a matter of fact that Mr. Strassberger, through his influence and connection with these different enter-

(Testimony of T. S. Kingston.)

prises, was getting practically all the cars the Santa Fe Railroad had at that time, tank-cars for water for the use of our company. Mr. Young, the person I have referred to in Bakersfield, was not an agent of our company to attend to the loading of the water. They called it the Bakersfield Water Company—or Bakersfield Water Loading Company—I am not positive. I do not know that it is a fact that our company was having the use of practically all of the tank-cars the Santa Fe Company had at that time. I do not know that practically all of the tank-cars were devoted to hauling water for the Pioneer Midway. I don't know that because they must have had more cars. I do not know how many more they had than those that were required for use by our company.

There was considerable traffic on the railroad at that time. I didn't have any particular trouble in getting our freight through. It came through all right.

(By Mr. MORRISON.)

I think this water cost us 6 cents a barrel. I didn't make any payments personally. I just O. K.'ed the bills and sent [605] them in to the office. It cost us 6 cents a barrel laid down on the tank-cars at Fellows. From those tank-cars we let it flow directly into our storage tanks. We had no difficulty at all in getting all the water we wanted. It was only a question of telephoning for it. At any time that I wanted to get more water I would simply telephone and the cars would be sent out in two days.

(Testimony of T. S. Kingston.)

Once in a while when we were in a hurry we would get it in one day. Once in a while I would get too much water, and I would telephone that *that* I didn't want so much, and then it would slip my memory or something and the next day or two I would be rustling around trying to hurry them up a little. We always seemed to get all the water we needed. All I wanted to get from those people I could get without any trouble. We didn't get sufficient to supply the Mays.

Q. As a matter of fact, you stated that you did supply the Mays first, but that you had to shut them off because you didn't get sufficient water, didn't you? A. No, we couldn't get it to them.

Q. Why couldn't you get it to them?

A. We didn't have an arrangement for the water to run down from our storage down to the lease.

We didn't have this arrangement until afterwards. We didn't get the gas engine until after the Mays had made arrangements with the Brookshire. It was a 2-inch pipe. The quantity of water we required per day was according to how much we would use in the hole. Some days we would use considerable in the hole, three or four hundred barrels, and other days we would use 80 or 90 barrels. We got all the water from the station at Fellows through our pipe-line. We did not haul it down in tank-cars to the lease. [606]

Q. And you had then two cars a day, practically, did you?

A. No, about two and one. And sometimes we

(Testimony of T. S. Kingston.)

would stop altogether for a few days.

I do not know exactly how much water we required on the average. The tank at Fellows was a 500-barrel tank. The railroad was grading in there. The tank was set down in the excavation that was made there for the building of the railroad. We were drilling wells 1 and 2 on the Pioneer Midway property during 1909. The most that we ever had going at one time was two wells. We had these two wells going during the latter part of May, June and July. We rigged up our engine for the water line along in May some time. I think we quit delivering water to the Mays in the first part of May.

Q. That is, when you started drilling two wells you told the Mays that you couldn't any longer supply them with water because you couldn't get the water?

A. Well, I told the Mays when they hooked on that it would just be temporary; that we would give them water to get started with.

Q. As long as you could supply it that you would give them water?

A. Well, there was nothing said about as long as we could supply it. We just made a temporary arrangement so that they could get started.

That water-line was a 2-inch pipe-line. Until we coupled this water-line up with the gas engine sometimes we could get enough water for one well and sometimes we couldn't. After we got the water started through the line and could keep water up in the upper end of the line. We never got out of

(Testimony of T. S. Kingston.)

line, it would run down four or five hundred barrels a day. Sometimes we [607] got out of water at the upper end of the line. We never got out of water at the lower end of the line. We always kept that tank—well, we tried to keep that tank full. Of course sometimes we would use out more than usual and use down on this 1,000-barrel storage. Sometimes we would have more than half of that used up.

Q. And that despite the fact that you got one or two carloads every day and could telephone for it any time?

A. Well, it would be at the time that we were filling up, and I would telephone in to stop the shipping for a few days, and then there might be a delay of a day before the shipments would start again, and then the water would begin to get pretty low.

Q. Now, you would keep this 1,000-barrel tank more or less full, and when you got it about full you would tell them to stop the shipments?

A. No, we had another tank there at the railroad track of 500 barrels. When we got all of them full we would stop.

The quantity of water we would use would be according to how much we would use in the hole. If we didn't have to use any in the hole 200 barrels would supply the two wells. If we didn't have to use water in the hole it would take about 200 barrels a day, or 100 barrels a day for each well. If the sand was bad in the hole we might have to pour in a great amount. I have known the boys to use 400 barrels in a day in a hole on that property. I would not

(Testimony of T. S. Kingston.)

consider it safe to run two strings of tools unless I had arrangements to meet emergencies such as that. There would be danger of your hole caving in and of losing your hole or your casing if you didn't have sufficient water. All the different things could happen if you didn't have water that would cause great expense and the loss of a great deal of money. As a matter of fact, water is one of the most important things to acquire in [608] all operations. As a good driller, I certainly would hesitate to go ahead unless I was pretty sure of my supply.

The Mays go their water from our pipe-line in this way— We had a tank on the Southwest corner of Section 30. We had a pipe-line there, *then* they had connected onto our pipe-line. They didn't connect with our pipe-line before it reached us. We didn't allow them to connect into our tanks. I made them connect onto our pipe-line outside of the tank that was running to our well, so that I could close them off at any time without emptying our tank. This pipe-line ran direct from Fellows to our tank, and from the tank I had a line running direct to our wells. The Mays connected with the line running from our tank to the wells, and the water flowed by gravity from that line down through their pipe to their property. I don't remember the size of their pipe-line. I spoke of Mr. Young in connection with the Bakersfield Loading Company or Loading Water Company. I did not mention him in connection with the West Side or the Western Water Company. I think the loading racks of the Bakersfield Company were on

(Testimony of T. S. Kingston.)

the Santa Fe property in Bakersfield, but I couldn't say where they were. I never went down there to see where the cars were loaded.

Redirect Examination.

(By Mr. HALL.)

There were other companies that shipped water out there to drill with in 1909. The Hawaiian shipped water out. Then there was a company down at the end of the Y that got water there, I don't know who they were; it seems to me it was the Cleveland Oil Company. I quit that particular locality about August 1st, 1909. There was no delay in the receipt of water prior to the time I left there in 1909. There seemed to be quite a lot of [609] congestion of freight, that is lumber and pipe and stuff like that.

Recross-examination.

(By Mr. MORRISON.)

There was a lot of freight and stuff being hauled in there on the railroad in 1909. There were a lot of derricks, etc., being brought in. I testified that there was quite a congestion of the lumber, but that I had no difficulty in getting our water. So far as I was concerned, there were no difficulties in getting water.

Thereupon under stipulation of counsel, the testimony of J. J. McCLIMANS given in the suits of United States v. Brookshire Oil Company et als., Nos. A.-34, A.-35, and A.-36, in the Southern District of California, was read into the record on behalf of the plaintiff and is as follows:

Testimony of J. J. McClimans, for Plaintiff (In Rebuttal).

J. J. McCLIMANS, a witness called on behalf of the plaintiff, in rebuttal, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is J. J. McClimans. I reside at Fellows, Kern County, California. I am superintendent of an oil property. I have been engaged in working in and about the oil fields of California since 1900. I have only worked between Fellows and Taft. In 1909 I was working on Section 32 in McKittrick, for the Olig Crude Oil Company. I commenced working for that company on January 20, 1909, on Section 32, Township 31 South, Range 23 East. I don't remember the exact date we started to spud in, but we started [610] in doing a little rigging up on the 20th of January. I think it was along about the 1st of February when we spudded in. We got our water for drilling that well through a water line from the Stratton Water Company. The line was owned by the Olig Crude Oil Company, the California Midway, and I believe the Cleveland Oil Company. The Cleveland, the California Midway No. 1 and the Olig Crude No. 1 wells were supposed to get water out of that line from the Stratton Water Company during 1909. I don't remember when the Cleveland well No. 1 started. It was over on Section 4, in Township 31, Range 23. Cleveland No. 1 was drilling during

(Testimony of J. J. McClimans.)

part of the time I was drilling Olig Crude well No. 1. I can't give you any idea when Cleveland No. 1 started drilling. I finished Olig Crude No. 1 in September, 1910. It was not finished as a producing oil well until December, 1910. I don't remember exactly how long we drilled on it during the year 1909, but we drilled continuously. I believe we drilled continuously with the exception of when we moved the rig. We moved the rig three times on that well. California Midway No. 1 was the other well that was drilling there that year. I think it commenced about the 10th of January, 1909. All three wells, the California Midway No. 1, the Olig Crude No. 1, and the Cleveland No. 1 were drilling simultaneously in 1909. They were all getting water out of the Stratton Water Company line. In 1909 we had some little trouble in getting water to drill Olig Crude No. 1, but we never ran out. Our drilling on Olig Crude No. 1 during 1909 was never stopped because of lack of a supply of water. I did not know of the California Midway or Cleveland No. 1 being stopped in 1909 because of lack of water. I knew they were working on Sunset Monarch well No. 1 up in Section 20. They started some time in the summer of 1909. They got water from the Stratton Water Company. They started to get water through this [611] same line that we had. That is where we had trouble, so they laid a line direct from the Stratton Water Company and connected onto the California Midway No. 1. The water-line that came up from the Stratton Water

(Testimony of J. J. McClimans.)

Company and supplied California Midway No. 1, Olig Crude No. 1, and Cleveland No. 1 was a 2-inch line. I do not know exactly when wells Nos. 2 and 3 of the California Midway were drilled on the East half of Section 32. I know they were drilling or working on them in 1910. I wouldn't be certain that they were in 1909. I did not do any work on California Midway wells Nos. 2 and 3. I did not particularly observe them drilling there and know of what was going on. I never heard during that time of any stoppage on account of supply of water. At that time the California Midway got its water from the same course through the line that went up to Olig crude No. 1. I knew about the Canadian Pacific well No. 1 on Section 4, in the township below. It was started some time in 1909; I don't know exactly. I believe it got its water from the Stratton Water Company. I think they were connected onto our line. I did not hear that the Canadian Pacific had any trouble on account of lack of water in 1909.

The Sunset Western Railroad ran out through that vicinity in 1909. It was extended by the middle of the summer to Fellows. I think it was into Fellows in the latter part of 1908. I said that we had trouble with the Sunset Monarch about getting water for their well No. 1 and they put in another line. This trouble might have been due to a lack of water at the source or to the size of the pipe. If the pressure of water had been on the line all the time there probably would have been plenty enough for all of us to drill up there. I did not hear of any trouble that

(Testimony of J. J. McClimans.)

the Sunset Monarch had after they constructed their own line. I don't remember when the Sunset Western Railroad was extended to Shale. [612] It now runs up to the town of Shale in Section 25. The drillers and tool-dressers usually do the work of rigging up a well preparatory to spudding in. It requires a crew of four men for a standing rig.

Cross-examination.

(By Mr. MORRISON.)

I first became acquainted with this field in 1900. I remained there until 1902 and then I left and came back in 1903, and was there continuously. I believe the California Midway No. 1 started drilling on January 10. I don't remember when they finished drilling. I believe they were drilling on that well over a year. I was there when it was completed. I don't remember the date of its completion. I think that well was completed along some time in the spring of 1910. I don't know when Cleveland No. 1 was started, nor when it was completed. Olig Crude well No. 1 was started in January, 1909, and was completed in December, 1910. We completed it into the oil sand in September and then we got a gusher there and we had to finish with a rotary with a small pipe. I don't remember just exactly the depth to which California Midway No. 1 was drilled, but I think it was along about 2,900 feet. I don't know how deep Cleveland No. 1 was drilled. Olig Crude No. 1 was 2,814 feet deep when completed. I don't know when the Sunset Monarch well was started nor when it was completed. I think it was some time in 1909. I fix that year on account of it

(Testimony of J. J. McClimans.)

being connected onto our well. I am not certain whether it was in 1909 or 1910. I can not tell you when the Canadian-Pacific well was started nor when it was completed.

During the year 1909 I had charge of the McKittrick property—the Olig Crude in McKittrick. That was where we started in in 1900. In 1909 I had charge of that property and the Midway [613] on Section 32. I devoted my time between the two places. I lived in McKittrick at that time and spent the most of my time in 1909 and 1910 on Section 32. It kept me pretty busy. Of all the wells that I have mentioned in the Midway field, Olig Crude No. 1 was the only one that I had anything to do with at all. We first struck oil in that well at a depth of 2,757 feet. We moved the rig three times in drilling that well on account of bad holes. We lost our pipe and one thing and another. Sand and boulders that we encountered at the top of the hole down to a thousand feet—or nine hundred feet, was the cause of losing those holes. We lost two holes completely before we started the third. There might have been a way to prevent the loss of those holes. If I had known the conditions at that time as I know them now I might have been able to prevent it. I will tell you how I did prevent it. I threw away the stovepipe casing and used heavy pipe and had no trouble after that. After I ascertained the kind and character of the territory, drilling on the next well was comparatively easy. I had a good deal of trouble until I found out how to cure it, with the sands and boulders

(Testimony of J. J. McClimans.)

and so forth. The first hole on Olig Crude No. 1 was lost at 1800 feet. The second hole was lost along about the same place, between 700 and 800-850. The third hole I completed. We were working on the first hole about three months before I lost it. I think we spent two or three months on the two holes—most of the summer. We were about six months on the two holes from the time we commenced until we started our third hole, I believe. It took 60 days to get the third hole down beyond the point where I had trouble in the two other holes. I spent something over six months in experimenting, and then I was able to do the same thing in sixty days without any loss. The loss was caused by caving of the sands or the shifting of the boulders. We endeavored [614] to prevent the caving of the hole by quitting the use of the stovepipe casing and using heavy screw-pipe. The sands and boulders were unable to smash this pipe in. We used mud and water for holding back a sand that is shifting in character—quicksand or such as we encountered there. Sometimes water will hold it back. If you have sufficient weight of mud and water you can check that. If we had not had a water supply we couldn't have been able to get a well down at all.

Q. If you started a well and got it down in this sort of territory and your water then failed what would be the effect upon the hole?

A. Well, I don't know, because I have had no experience of that kind.

In the drilling that I have done I have never had

(Testimony of J. J. McClimans.)

to wait for water. My operations during those years were confined to this particular property and this particular well. I found the stratification more or less uniform in the three holes that I started. The first two holes were 20 feet apart. The third hole was 100 feet away. The stratification remained more or less uniform. I encountered a water stratum on the way down. We didn't get any water in the first two holes at all. We didn't reach the water until we got down 940 feet. I am familiar with the Brookshire well No. 1. I do not know exactly when that well was started. I don't remember whether it was started before or after the wells to which I have referred, but I think it was before or along about that time any way. You have stated that certain of the witnesses have testified that the Brookshire well was started April 18, 1909, but I couldn't say exactly. I have just traveled back and forth there and I know they were working on it at that time. I got our water from a water line of our own, which was sold to us [615] by Wilson, Wheat and McLeod. I think it was possibly what they called the Western Crude Oil Company. I didn't get water through the Brookshire line at all. I made arrangements for water prior to starting work there. I did not make any negotiations myself with the Stratton Water Company. We made our arrangements with Mr. McLeod. I think the arrangements for water were made in the latter part of December, 1908, when we took it over. I believe we took the property over in the latter part of 1908 or

(Testimony of J. J. McClimans.)

early part of 1909. The rig was built when we took it over. We acquired the property from Wilson, Wheat and McLeod, and at that time they had this water line there and had arranged with the Stratton Water Company for water through that line. The line was built in 1908. I do not know at what time in the year it was built. It was there when we came there, and we came there some time in December, 1908. I know where the source of supply of the Stratton Water Company was. We were nearer the source of supply than the Brookshire property in Section 24. We are about three or four miles nearer to the source of supply of the Stratton Water Company. I don't know that all of the water from the Stratton Water Company came from the same pump. We had no pump. We were connected onto a tank of the Stratton Water Company. I never was on the Brookshire property with the exception of traveling through there on the county road. I believe I stopped there once or twice at the time we were working on No. 1 on the California Midway. They were right close by. We were neighbors. I was never at Cleveland No. 1 or Sunset Monarch No. 1, or Canadian Pacific No. 1. I know nothing about the difficulties those three wells may have encountered with respect to their water supply. The only thing I can testify about is the condition in our own wells, and what I have said about the other wells is merely my impression. I believe the Sunset Monarch is on [616] Section 20. I don't know, as a matter of fact, that the Sunset Monarch lost its first

(Testimony of J. J. McClimans.)

string of casing by reason of a failure in its water supply. I never heard anything to that effect. I know they had trouble but I don't know what it was over. I supposed it was something like my own. I knew that they did have trouble. I am not certain whether the Sunset Monarch Company is the Spreckels Company or not. I don't know as a matter of fact that the Sunset Monarch was shut down part of the time. I don't know anything about the Californai Midway being shut down part of the time. California Midway worked continuously, I believe, on their No. 1 well.

Redirect Examination.

(By Mr. HALL.)

The supply of water came down from the Stratton Water well on Section 7, down to our Southwest corner of Section 32, by gravity alone.

Thereupon, under stipulation of counsel, the testimony of A. I. BURNS given in the suits of United States v. Brookshire Oil Company et als., Nos. A.-34, A.-35 and A.-36 in the Southern District of California, was read into the record on behalf of the plaintiff and is as follows:

Testimony of A. I. Burns, for Plaintiff (In Rebuttal).

A. I. BURNS, a witness called on behalf of the plaintiff, in rebuttal, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

In the year 1909 I was working in the North Mid-

(Testimony of A. I. Burns.)

way field, in Section 14, 31-22, for the Bear Creek Oil Company. They were drilling well No. 1 on the Southwest quarter of the section. [617] The well was spudded in about July 1, 1909. We got our water supply from the Stratton Water Company, but connected on to the Brookshire pipe-line near their No. 1 well. We had no trouble from lack of water from the day the well was spudded in until it was a finished producing well.

Cross-examination.

(By Mr. KAETZEL.)

We didn't have much trouble drilling that well to 1,200 feet. Later it fell off in production and the well was deepened. We were shut down once for casing on the start. We decided to put in a larger casing and pulled out the first one and shut down waiting to get the other casing. We were shut down once for drilling tools. The first time for about 10 days and the next time for about 1½ days.

Thereupon, under stipulation of counsel, the testimony of A. O. TABOR given in the suit of United States v. Consolidated Mutual Oil Company et als., No. A.-41 in the Southern District of California, was read into the record on behalf of the plaintiff and is as follows:

Testimony of A. O. Tabor, for Plaintiff (In Rebuttal).

A. O. TABOR, a witness called on behalf of the plaintiff, in rebuttal, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

I was employed on the Cleveland well in the North-east quarter of Section 4 in March, 1909, for the France Oil Company. I started No. 1 well on that property. We had a storage tank. Our supply came from the Stratton Water Company. I was employed there from March to December, 1909. We were working on the well except when we were waiting for a casing and mud. We shipped a carload of mud [618] from near Los Angeles. The well was not completed when I left in December. We had no cessation of work from lack of water that I recall. The water in the tank would get down to 3 feet from the bottom. We never lost a casing that I recall from lack of water. During the time I was employed by the California Midway Oil Company in the early part of April, 1910, we had to quit because of lack of supply of water. Mr. Stearns, the superintendent, went to Bakersfield and made arrangements with the railroad company for water to be shipped out there in cars. Thereafter we got our supply in cars and not from the Stratton Water Company. This supply was run first into a tank at No. 1 and then piped to tank No. 2.

(Testimony of A. O. Tabor.)

Cross-examination.

(By Mr. LAWLER.)

When Mr. Stearns instructed us to cease drilling and conserve water the supply had gotten to a point where there was some danger of even running out of enough water for the boiler. I knew nothing about the water situation before that. The pressure was low on account of not enough fall from No. 1, but I didn't go over to observe the pressure in the main line. There were times when the Stratton Water Company was short of water.

Thereupon, under stipulation of counsel, the testimony of JAMES BICKMORE given in the suit of United States v. Consolidated Mutual Oil Co. et als., No. A.-41 in the Southern District of California, was read into the record on behalf of the plaintiff and is as follows:

Testimony of James Bickmore, for Plaintiff (In Rebuttal).

JAMES BICKMORE, a witness called on behalf of plaintiff, in rebuttal, having been first duly sworn, testified as follows: [619]

Direct Examination.

(By Mr. HALL.)

I was employed as a driller for the California Midway on well No. 1, on Section 32 in October, 1909. I worked on well No. 1 until January or February, 1910. Our source of water supply was the Stratton Water Company. We had a fifteen hundred barrel

(Testimony of James Bickmore.)

storage tank when I went there. There was no shortage of water while I was drilling No. 1, nor cessation of work due to shortage of water. We had a small tank, 15 barrels, at No. 2. There was never any shortage of water at No. 2. I commenced work on No. 2 in February, and remained there until April 1, 1910. The Stratton Water Company was the source of supply of that well. When I came back in June there was a change and they had water shipped in from Bakersfield. From June, 1910, to January, 1911, No. 2 was connected with the storage tank at No. 1. We were shut down in July 1910, because of lack of water supply. That was after the Stratton Water supply was cut off and we were using from the tank car supply, we lost no string of pipe by the shut down.

Cross-examination.

(By Mr. LAWLER.)

I don't know anything about the controversies the superintendent had about water. I heard talk of it. My duties were not connected with that. Beyond the water at No. 1 I don't know anything about it.

[620]

Thereupon under stipulation of counsel the testimony of PAUL FOX, given in the suit of United States v. North American Oil Consolidated, et als., No. A.-48 in the Southern District of California, was read into the record on behalf of the plaintiff and is as follows:

Testimony of Paul Fox, for Plaintiff (In Rebuttal).

PAUL FOX, a witness called on behalf of the plaintiff in rebuttal, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

I was a director of the Fox Oil Company and operating in the Midway field in 1909. We commenced drilling operations on Section 15, 31-23, November 26, 1909. We acquired water from the Santa Fe Railroad or the Santa Fe water-line. The water came from the Santa Maria springs back of McKittrick. We used this water supply until we finished the well on Section 15 January 25, 1910.

Cross-examination.

(By Mr. WHEELER.)

We struck tar sand at 500 feet and completed drilling at 1,000 feet. The well was on a slope. Negotiations for water were conducted by S. A. Johnson. We were about the thirty-first on the list of the Santa Fe and through the courtesies shown by Mr. Johnson to the Santa Fe we were moved up to third on the list.

Redirect Examination.

(By Mr. HALL.)

So far as I know our use of water was not limited to domestic purposes, but I didn't carry on the negotiations with the Santa Fe.

(Testimony of Paul Fox.)

Recross-examination.

(By Mr. WHEELER.)

When the Santa Fe was short of water they shut us off. The [621] idea was we were allowed to have some of the surplus if the Santa Fe had plenty.

Thereupon, under stipulation of counsel, the testimony of EDWIN HALL WARNER, given in the suit of United States v. Thirty-two Oil Company et als., No. A.-38 in the Southern District of California, was read into the record on behalf of the plaintiff and is as follows:

Testimony of Edwin Hall Warner, for Plaintiff.

EDWIN HALL WARNER, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

I am a civil engineer and as such examined the matter of water supply in certain portions of the Midway oil field in 1909. The investigation was made January 5 and 6, 1909. There was a small water supply having its source in what is called the Stratton wells. The railroad was bringing in tank-cars and water from the Kern River. These were the two sources of supply at that time. I have had 22 years' experience as a civil engineer, water supply and hydraulic engineering entering into my experience. From my investigation I found that the water from the Stratton well and the Kern River were absolutely inadequate to supply the district. I made an estimate of the amount necessary to furnish the district. I also looked into the matter of another

(Testimony of Edwin Hall Warner.)

source from which water might be available and located a place for pumping plant from which to supply the district. Buena Vista Lake was one. I found a flowing water well on Section 7, Township 32 South, Range 25 East. The diameter of this flowing well was 4 inches. This well in Section 7 which I have just mentioned was about 18 miles from the Stratton water wells on Section 7 in Township 32, Range 23. [622] There was no other source except Maricopa. I paid no attention to the ownership of the land in the investigation. I was interested simply in examining the supply and reporting on the water situation and what it would cost to correct the conditions.

Cross-examination.

I have been referring to the 4-inch water well on Section 7 in Township 32 South, Range 25 East. I did not make any examination of that well, simply tasted the water and photographed the well. The idea of that photograph was to show that this was an artesian belt. As you will note on the map which is a part of my report, there is in Section 6, one township to the east, an 8-inch flowing well; and also immediately south of it there is a 4-inch flowing well; and on Section 12 there is a 4-inch flowing water well. There is an artesian belt all through there. The water is about 100 feet or more deep. Nobody knows the extent of that artesian belt. It does not come from Buena Vista Lake. It is not leakage from Buena Vista Lake. It is natural artesian water. It is good water, good for domestic purposes and boiler

(Testimony of Edwin Hall Warner.)

purposes. In January, 1909, this artesian belt was developed by a 4-inch well, a 6-inch well, another 4-inch well. That would be at least 14 inches of water naturally flowing there. There was also a very large reservoir in Buena Vista Lake. Buena Vista Lake was nearer to the fields than those Midway wells. It was good water. These water wells which I have just mentioned were 12 or 14 miles from the Midway oil fields. There was no question of the abundance of the artesian water and the water in Buena Vista Lake. The only question was getting it there on the ground. These flowing wells were within one-eighth of a mile from the Sunset Western Railroad. I do not recall having made any investigation of the Chanslor-Canfield or the Santa Fe water supply. If there was such [623] a line in the field I would probably have referred to it in my report. I did not know that they were bringing water down from the wells at McKittrick into the Midway field at that time. I think their line must have come into there subsequently to my investigation because the Santa Fe was bringing in water in tank-cars from the Kern River. The Santa Fe, or Chanslor-Canfield, water-line which you have mentioned is absolutely new to me. I did not know they had a water line down there in 1909. I made no investigation of the water wells at McKittrick. I had heard nothing about them at that time. The artesian belt I have spoken about is described in United States Geological Survey Water Supply Paper No. 222 for the year 1908. I have a copy of this report in my library. It is available to

(Testimony of Edwin Hall Warner.)

the public. You can get them for 5 cents a piece. It is a report which is available for all engineers, as are all Government publications on the matter of water supply and hydraulic elements generally. The Government furnishes us an immense amount of very valuable information which I commend to the attorneys. If you would go to the public library you would find all this information. Most public libraries keep this.

Thereupon, under stipulation of counsel, the testimony of FRANK SCOTT, given in the suit of United States v. Thirty-Two Oil Company et al., No. A.-38, in the Southern District of California, was read into the record on behalf of the plaintiff and is as follows:

Testimony of Frank Scott, for Plaintiff.

FRANK SCOTT, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Cross-examination. [624]

(By Mr. LAWLER.)

Q. Do you know whether or not at that time there was sufficient water available there to operate wells Nos. 1 and 2 at the same time?

A. Yes, we always had 1500 barrels storage at No. 1. We had a 1500-barrel tank there, and it was always full. So that that would give us quite a supply of water.

(By Mr. WHITAKER.)

Q. Mr. Scott, do you remember having a conversa-

(Testimony of Frank Scott.)

tion with me shortly after the noon recess?

A. Yes.

Q. At which you stated to me that the trouble was that you people couldn't get enough water to run wells Nos. 1 and 2 at the same time, and that at one time Mr. Jergins, who was the field manager for the California Midway Oil Company, had gone to Mr. Kay, the superintendent of the water company, and had offered him \$10 to get him more water?

A. That was after No. 1 was finished.

Q. Didn't you make the statement that there was not sufficient water, and that the trouble was that you couldn't get enough water to run both wells at one time?

A. That day, yes, until we could get a car out the next day from Bakersfield. That is when we first started to ship water.

Redirect Examination.

(By Mr. HALL.)

That was after California Midway well No. 1 came in and we had our tankage and we were trying to open her up and get her to flow. That didn't have reference to the time when we had this 1500-barrel storage at well No. 1. This 1500-barrel tank at No. 1 was full every four hours, and we had to take that out and use it for [625] storage to save the oil until we got our tankage up. After we had this 1500-barrel storage for water we had plenty of water for wells 1 and 2 both. [626]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

No. A.-58—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, GENERAL PETROLEUM CORPORATION, PRODUCERS TRANSPORTATION COMPANY, BRITISH-AMERICAN OIL COMPANY, NORTH MIDWAY OIL COMPANY, SUSAN ELLIOTT, A. B. PERKEY, F. J. ELLIOTT, JOHN BARNESON AND WILLIAM WALKER,

Defendants.

Stipulation in Re Statement of Evidence.

IT IS HEREBY STIPULATED and agreed by the parties to the above-entitled suit, by and through their respective solicitors, as follows:

That the inclusion of the foregoing statement of evidence of testimony of witnesses reproduced in the exact words of the witnesses by questions and answers, is in accordance with the desires of the parties hereto;

IT IS FURTHER STIPULATED that this cause

was finally heard and determined by the Honorable Robert S. Bean, United States District Judge for the District of Oregon, sitting by special assignment herein, and whereas said assignment has expired, that the statement of the evidence in the above-entitled cause may be approved and signed by the Honorable Oscar A. Trippet, United States District Judge for the Southern District of California, and the signing and approval of the same by the said Honorable Oscar A. Trippet as such judge, shall have the same force and effect as though [627] said statement of the evidence was signed and approved by the said Honorable Robert S. Bean.

HENRY F. MAY,
FRANK HALL,

Special Assistants to the Attorney General,

C. D. HAMEL,

Special Assistant to the United States Attorney,
Solicitors for the Plaintiff.

A. L. WEIL,

Solicitor for General Petroleum Company, Bankline Oil Company, General Pipe-Line Company of California, General Petroleum Corporation, John Barneson and William Walker.

J. R. PRINGLE,

Solicitor for Dominion Oil Company.

PILLSBURY, MADISON & SUTRO,

Solicitor for Standard Oil Company.

ANDREWS, TOLAND & ANDREWS,

T. O. TOLAND,

L. W. ANDREWS,

A. V. ANDREWS,

Solicitors for Producers Transportation Company,

British-American Oil Company, North Midway Oil Company.

IT IS SO ORDERED, Sept. 16, 1919.

TRIPPET,
Judge. [628]

[Endorsed]: No. A.-58. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America vs. Dominion Oil Company et al. Stipulation in Re Statement of Evidence. Filed Sep. 16, 1919. Chas. N. Williams, Clerk. By Maury Curtis, Deputy Clerk.

[Endorsed]: In Equity—No. A.-58. United States of America, Plaintiff, vs. Dominion Oil Company et al., Defendants. Statement of the Evidence to be Incorporated in the Record on Appeal. Filed Sep. 16, 1919. Chas. N. Williams, Clerk. By Maury Curtis, Deputy Clerk. [629]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

No. A.-58—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL

PRODUCERS AGENCY, GENERAL
PETROLEUM CORPORATION, PRO-
DUCERS TRANSPORTATION COM-
PANY, BRITISH-AMERICAN OIL COM-
PANY, NORTH MIDWAY OIL COM-
PANY, SUSAN ELLIOTT, A. B. PERKEY,
F. J. ELLIOTT, JOHN BARNESON and
WILLIAM WALKER.

Defendants.

Petition for Appeal by the United States of America.

The above-named plaintiff, the United States of America, conceiving itself aggrieved by that certain final decree made and entered in the above-entitled cause dismissing its bill, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons and upon the grounds specified in the assignment of errors which is filed herewith. Said plaintiff prays that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, in the manner and form prescribed by Rule 75 of the "Rules of Practice for the Courts of Equity of the United States."

Dated this 4th day of June, A. D. 1919.

HENRY F. MAY,
FRANK HALL,

Special Assistants to the Attorney General, [630]

CHAS. D. HAMEL,

Special Assistant to the United States Attorney,

Solicitors for the Plaintiff.

Service of the above Petition for Appeal by the United States of America is hereby accepted this 30th day of June, A. D. 1919, for and on behalf of the appellees, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, General Pipe-Line Company of California, Independent Oil Producers Agency, General Petroleum Corporation, Producers Transportation Company, British-American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey, F. J. Elliott, John Barneson and William Walker.

A. L. WEIL,

Solicitor for General Petroleum Company, Bankline Oil Company, General Pipe-Line Company of California, General Petroleum Corporation, John Barneson and William Walker.

J. R. PRINGLE,

Solicitor for Dominion Oil Company.

OSCAR SUTRO,

PILLSBURY, MADISON & SUTRO,

Solicitor for Standard Oil Company.

ANDREWS, TOLAND & ANDREWS,

Solicitor for Independent Oil Producers Agency, Producers Transportation Company, British-American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey and F. J. Elliott.

[Endorsed]: No. A.-58. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America, vs. Dominion Oil Company et als. Petition for Appeal by the United States of America.

Filed Jul. 7, 1919. Chas. N. Williams, Clerk. By
Maury Curtis, Deputy Clerk. [631]

*In the District Court of the United States for the
Southern District of California, Northern Divi-
sion, Ninth Circuit.*

No. A.-58—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PE-
TROLEUM COMPANY, BANKLINE OIL
COMPANY, STANDARD OIL COMPANY,
GENERAL PIPE-LINE COMPANY OF
CALIFORNIA, INDEPENDENT OIL
PRODUCERS AGENCY, GENERAL
PETROLEUM CORPORATION, PRO-
DUCERS TRANSPORTATION COM-
PANY, BRITISH-AMERICAN OIL COM-
PANY, NORTH MIDWAY OIL COM-
PANY, SUSAN ELLIOTT, A. B. PERKEY,
F. J. ELLIOTT, JOHN BARNESON and
WILLIAM WALKER.

Defendants.

Assignment of Errors on Appeal.

Now comes the United States of America, the
plaintiff in the above-entitled cause, and files the fol-
lowing assignment of errors upon which it will rely
upon its prosecution of the appeal prayed for by it

from the decree of dismissal entered in said cause by this Honorable Court:

I.

The Court erred in dismissing the bill of complaint and said cause and in entering its final decree so dismissing said bill and cause.

II.

The Court erred in denying, on January 20, 1919, the plaintiff's petition for rehearing filed in said cause, and in dismissing the bill.

III.

The Court erred in failing and refusing to hold, adjudge and decree that the plaintiff was and is fully entitled to the relief prayed for by it in its said bill of [632] complaint, and in failing and refusing to adjudge and decree that the title to the property described in said bill of complaint was the perfect property of the plaintiff, free and clear of the claims of the defendants, and each and every one of them.

IV.

The Court erred in finding and holding in its opinion filed in said cause as the basis for its said decree that the defendants or any of them were excused from diligently prosecuting their alleged work leading to the discovery of oil prior to and after September 27, 1909, by reason of any alleged difficulty or expense in obtaining water and materials for use in drilling on said land.

V.

The Court erred in holding that the defendants and those under whom they claim were *bona fide* occupants and claimants of the property in question at

the date of the withdrawal of September 27, 1909.

VI.

The Court erred in failing to hold that the locators were not *bona fide* locators and that the location notice was posted in the interest and for the benefit of the defendant, The British-American Oil Company, a corporation, or some one other than said locators, and to enable said corporation or some one other than the locators to acquire more than 20 acres of mineral land in violation of the laws of the United States.

VII.

The Court erred in failing to hold that the location notice was posted without the intent on the part of the persons named thereon, or any other person or persons, to pursue discovery work on the lands embraced therein.

VIII.

The Court erred in failing to hold that the locators did not act in good faith for their own benefit in that they [633] acted without intent to prosecute development work leading to the discovery of oil and that no right could be derived therefrom.

IX.

The Court erred in failing to find that no right could accrue to the claimant for the 160 acres claimed in the tract involved herein for the reason, if for no other reason, that there were eight original locators upon the 160-acre tract who had no valid claim thereto or right therein but transferred and assigned their pretended claims and interests therein to a corporation prior to discovery or any work thereon;

and there was no inception of development work upon or under said 160-acre tract prior to said transfer or prior to the withdrawal order of September 27, 1909, and therefore the right thereto did not exist and was not given by the act of March 2, 1911; or otherwise.

X.

The Court erred in failing to hold that the material placed upon the property in question and the occupancy thereof prior to September 27, 1909, were intended merely to hold the property and prevent its acquisition and development by other persons, instead of with the intent to begin and proceed with development with the diligence required by law, or at all.

XI.

The Court erred in finding that the defendants and those under whom they claim were in the diligent prosecution of work leading to the discovery of oil on said land on and prior to September 27, 1909.

XII.

The Court erred in holding in denying the petition for rehearing: "Nor does the fact that some of the parties who signed the notices (of location) did not know the name [634] of their principal invalidate the notice. They knew that they were not acting for themselves and were making the filings for and on behalf of some other person or persons, and the fact that their principal was undisclosed would not invalidate their action."

XIII.

The Court erred in holding, in denying the peti-

tion of rehearing, in substance and effect, upon the second ground urged by counsel for the plaintiff upon the motion for a rehearing, viz.: "that this location and others made for and on behalf of the syndicate, some two hundred in number, were speculations—and by that I understand counsel to mean that it was not the intention of the parties for whose benefit the locations were made to themselves develop the property, but that they made the locations with the purpose and expectation of selling and disposing of some of them to other parties and profiting thereby. I know of no statutory or other rule that forbids paper locations of this character, and these were but paper locations. They are not such as are recognized by the law of the United States. But the practice seems to have grown up in this country of making such locations and the locator obtaining some rights that were recognized by the community. The courts have recognized their right to sell and dispose of their interest under such locations, and the fact that they made them for that purpose would not, in my judgment, invalidate them."

WHEREFORE, the plaintiff prays that the said decree be revoked and the said District Court directed to grant the relief prayed for in the bill of complaint of the plaintiff herein.

HENRY F. MAY,
FRANK HALL,

Special Assistants to the Attorney General,

CHAS. D. HAMEL, [635]

Special Assistant to the United States Attorney,

Solicitors for Plaintiff.

Received a copy of the above and foregoing assignment of errors this 30 day of June, A. D. 1919.

A. L. WEIL,

Solicitor for General Petroleum Company, Bankline Oil Company, General Pipe-Line Company of California, General Petroleum Corporation, John Barneson and William Walker.

J. R. PRINGLE,

Solicitor for Dominion Oil Company.

OSCAR SUTRO,

PILLSBURY, MADISON & SUTRO,

Solicitors for Standard Oil Company.

ANDREWS, TOLAND & ANDREWS,

Solicitors for Independent Oil Producers Agency, Producers Transportation Company, British-American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey and F. J. Elliott.

[Endorsed]: No. A.-58. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America vs. Dominion Oil Company et als. Assignment of Errors on Appeal. Filed Jul. 7, 1919. Chas. N. Williams, Clerk. By Maury Curtis, Deputy Clerk. [636]

*In the District Court of the United States for the
Southern District of California, Northern Division,
Ninth Circuit.*

No. A.-58—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, GENERAL PETROLEUM CORPORATION, PRODUCERS TRANSPORTATION COMPANY, BRITISH-AMERICAN OIL COMPANY, NORTH MIDWAY OIL COMPANY, SUSAN ELLIOTT, A. B. PERKEY, F. J. ELLIOTT, JOHN BARNESON and WILLIAM WALKER,

Defendants.

Order Allowing Appeal.

On motion of Frank Hall, Special Assistant to the Attorney General of the United States, one of the solicitors for the plaintiff, United States of America, and on filing the petition of said plaintiff for an order allowing an appeal, together with an assignment of errors and a prayer for the reversal of the decree dismissing the bill of complaint herein:

IT IS HEREBY ORDERED that an appeal be, and is hereby, allowed to the United States Circuit Court of Appeals for the Ninth Circuit from the decree made and entered in the District Court of the United States for the Southern District of California, Northern Division, dismissing the bill of complaint herein:

IT IS FURTHER ORDERED that a transcript of the record, proceedings, papers and exhibits upon which said decree was made, duly authenticated and certified, be forthwith transmitted [637] to said United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 27th day of June, A. D. 1919.

R. S. BEAN,
District Judge.

Service of the above order allowing appeal is hereby accepted this 30th day of June, A. D. 1919, for and on behalf of the defendants, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, General Pipe-Line Company of California, Independent Oil Producers Agency, General Petroleum Corporation, Producers Transportation Company, British-American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey, F. J. Elliott, John Barneson and William Walker.

A. L. WEIL,
Solicitor for General Petroleum Company, Bank-
Line Oil Company, General Pipe-Line Company

of California, General Petroleum Corporation,
John Barneson and William Walker.

J. R. PRINGLE,

Solicitor for Dominion Oil Company.

OSCAR SUTRO,

PILLSBURY, MADISON & SUTRO,

Solicitors for Standard Oil Company.

ANDREWS, TOLAND & ANDREWS,

Solicitors for Independent Oil Producers Agency,
Producers Transportation Company, British-
American Oil Company, North Midway Oil
Company, Susan Elliott, A. B. Perkey and
F. J. Elliott.

[Endorsed]: No. A.-58. In the District Court of
the United States for the Southern District of Cali-
fornia, Northern Division, Ninth Circuit. United
States of America vs. Dominion Oil Company
[638] et als. Order Allowing Appeal. Filed Jul.
7, 1919. Chas. N. Williams, Clerk. By Maury
Curtis, Deputy Clerk. [639]

*In the District Court of the United States for the
Southern District of California, Northern Divi-
sion, Ninth Circuit.*

IN EQUITY—No. A.-58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PE-
TROLEUM COMPANY, BANKLINE OIL
COMPANY, STANDARD OIL COMPANY,

GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, GENERAL PETROLEUM CORPORATION, PRODUCERS TRANSPORTATION COMPANY, BRITISH-AMERICAN OIL COMPANY, NORTH MIDWAY OIL COMPANY, SUSAN ELLIOTT, A. B. PERKEY, F. J. ELLIOTT, JOHN BARNESON and WILLIAM WALKER,

Defendants.

Notice of Election by United States as to Printing of Record.

The United States of America having appealed from the decree of said court entered against the plaintiff, to the United States Circuit Court of Appeals for the Ninth Circuit hereby gives notice that it elects to take and file in the said Appellate Court, to be printed under the supervision of its clerk, under its rules, a duly authenticated transcript of such portion of the record as may be duly settled and indicated under Rule 75 of the "Rules of Practice for the Courts of Equity of the United States."

Dated this 30th day of June, A. D. 1919.

HENRY F. MAY,
FRANK HALL,

Special Assistants to the Attorney General,
CHAS. D. HAMEL,

Special Assistant to the United States Attorney,
Solicitors for the Plaintiff.

Received a copy of the above and foregoing notice
this 30th day of June, A. D. 1919. [640]

A. L. WEIL,
Solicitor for General Petroleum Company, Bank-
Line Oil Company, General Pipe-Line Company
of California, General Petroleum Corporation,
John Barneson and William Walker.

J. R. PRINGLE,
Solicitor for Dominion Oil Company.
PILLSBURY, MADISON & SUTRO,
OSCAR SUTRO,

Solicitors for Standard Oil Company.
ANDREWS, TOLAND & ANDREWS,
Solicitors for Independent Oil Producers Agency,
Producers Transportation Company, British-
American Oil Company, North Midway Oil
Company, Susan Elliott, A. B. Perkey and
F. J. Elliott.

[Endorsed]: No. A.-58. In the District Court of
the United States for the Southern District of Cali-
fornia, Northern Division, Ninth Circuit. United
States of America vs. Dominion Oil Company et als.
Notice of Election by United States as to Printing
of Record. Filed Jul. 7, 1919. Chas. N. Williams,
Clerk. By Maury Curtis, Deputy Clerk. [641]

*In the District Court of the United States for the
Southern District of California, Northern Divi-
sion, Ninth Circuit.*

No. A.-58—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PE-
TROLEUM COMPANY, BANKLINE OIL
COMPANY, STANDARD OIL COMPANY,
GENERAL PIPE-LINE COMPANY OF
CALIFORNIA, INDEPENDENT OIL
PRODUCERS AGENCY, GENERAL
PETROLEUM CORPORATION, PRO-
DUCERS TRANSPORTATION COM-
PANY, BRITISH-AMERICAN OIL COM-
PANY, NORTH MIDWAY OIL COM-
PANY, SUSAN ELLIOTT, A. B. PERKEY,
F. J. ELLIOTT, JOHN BARNESON and
WILLIAM WALKER,

Defendants.

**Praeceptum for Transcript of Record on Appeal by
United States of America.**

To Charles N. Williams, Clerk of the District Court
of the United States, for the Southern District
of California, Northern Division:

Please prepare, duly authenticate and transmit to
the clerk of the United States Circuit Court of Ap-
peals for the Ninth Circuit, for the appeal of the
plaintiff, United States of America, to the United

States Circuit Court of Appeals for the Ninth Circuit, from the decree dismissing the bill of complaint in the above-entitled suit entered and filed June 7, 1918, and which became final on January 20, 1919, by the order of the Court denying a rehearing and confirming the decree, a transcript incorporating the following portions of the record herein, excluding the formal and immaterial parts of all exhibits, documents and other papers included therein, in accordance with Equity Rule Seventy-six (76), to wit: [642]

1. Bill of complaint.
2. Answer of General Pipe-Line Company.
3. Answer of General Petroleum Company.
4. Motion to strike and to dismiss of Dominion Oil Company.
5. Motion of North Midway Oil Company and others to dismiss, motion for further and better statement, motion to strike and motion to transfer to law side.
6. Answer of defendants Independent Oil Producers Agency.
7. Order of December 18, 1916, denying various motions of Dominion Oil Company.
8. Answer of Bankline Oil Company.
9. Order of March 24, 1917, allowing filing of amended bill of complaint.
10. Amended bill of complaint filed March 20, 1917.
11. Order of March 29, 1917, setting for hearing plaintiff's application to amend bill.
12. Copy of notice of motion for leave to amend

bill filed April 11, 1917.

13. Order of Court of April 17, 1917.

14. Motion of John Barneson to dismiss, filed April 23, 1917.

15. Disclaimer of General Petroleum Company and Felix Chappellett filed April 26, 1917.

16. Order of April 28, 1917, allowing plaintiff to file amended complaint making John Barneson and William Walker new defendants.

17. Copy of amended bill of complaint filed May 14, 1917, pursuant to order of April 28, 1917.

18. Stipulation of Dominion Oil Company in re motion to strike out, etc., filed May 16, 1917. [643]

19. Answer of John Baneson and William Walker.

20. Order of May 3, 1918, setting cause for final hearing on April 8, 1918, and order directing minutes of December 18, 1916, be amended to show all pending motions then on file denied and setting April 8 for all parties to answer.

21. Order of April 8, 1918, continuing final hearing until April 10, 1918.

22. Order of April 10, 1918, continuing final hearing until April 15, 1918.

23. Order of April 15, 1918, continuing final hearing until April 17, 1918.

24. Order of April 17, 1918, continuing final hearing.

25. Answers of Producers Transportation Company, North Midway Oil Company, and British-American Oil Company filed April 19, 1918.

26. Orders of April 22, 23, 24, 25, and 26 on final hearing.
27. Answer of Dominion Oil Company.
28. Opinion of Judge Bean filed June 7, 1918.
29. Decree signed, filed and entered on June 7, 1918.
30. Plaintiff's petition for rehearing.
31. Order of December 9, 1918, continuing petition for rehearing until January 6, 1919.
32. Order of January 6, 1919, continuing hearing petition for rehearing until January 13, 1919.
33. Order of January 13, 1919, continuing hearing petition for rehearing until January 15, 1919.
34. Order of January 15, 1919, continuing hearing of petition for rehearing until January 20, 1919.
35. Order of January 20, 1919, on petition for rehearing. [644]
36. Order of January 21, 1919, denying petition for rehearing.
37. Copy of Court's memorandum opinion denying plaintiff's petition for rehearing.
38. Statement of the evidence to be incorporated in the record on appeal as finally approved by the Court or the Judge thereof.
39. Petition of the United States of America for its said appeal.
40. Order allowing appeal.
41. Assignments of error on appeal.
42. Citation issued on said appeal, showing service thereof.
43. Notice of election by plaintiff and appellant as to printing of record.

44. This praecipe. (Statement dated Sept. 8, 1919.)

45. Stipulation as to form of record and signing.
Dated at Los Angeles, California, this — day of June, A. D. 1919.

HENRY F. MAY,

FRANK HALL,

Special Assistants to the Attorney General.

CHAS. D. HAMEL,

Special Assistant to the United States Attorney, Solicitors, for the Plaintiff. [645]

Due service upon the defendants of a copy of the foregoing praecipe, on the 30th day of June, 1919, is hereby acknowledged, and the ten days' notice provided in Equity Rule Seventy-five (75) is hereby waived.

A. L. WEIL,

Solicitor for General Petroleum Company, Bankline Oil Company, General Pipe-Line Company of California, General Petroleum Corporation, John Barneson and William Walker.

J. R. PRINGLE,

Solicitor for Dominion Oil Company.

OSCAR SUTRO,

PILLSBURY, MADISON & SUTRO,

Solicitor for Standard Oil Company.

ANDREWS, TOLAND & ANDREWS,

Solicitor for Independent Oil Producers Agency, Producers Transportation Company, British-American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey and F. J. Elliott.

[Endorsed]: No. A.-58. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America vs. Dominion Oil Company et als. Praecipe for Transcript of Record on Appeal by Plaintiff. Filed Sep. 16, 1919. Chas. N. Williams, Clerk. By Maury Curtis, Deputy Clerk. [646]

*In the District Court of the United States in and for
the Southern District of California, Northern
Division.*

IN EQUITY—No. A.-58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, GENERAL PETROLEUM CORPORATION, PRODUCERS TRANSPORTATION COMPANY, BRITISH-AMERICAN OIL COMPANY, NORTH MIDWAY OIL COMPANY, SUSAN ELLIOTT, A. B. PERKEY, F. J. ELLIOTT, JOHN BARNESON, and WILLIAM WALKER,

Defendants.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Chas. N. Williams, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing six hundred forty-six (646) typewritten pages, numbered from 1 to 646, inclusive, to be a full, true and correct copy of all of the pleadings, orders and papers specified in plaintiff's praecipe for transcript on appeal, and that the same together constitute the record on appeal in said cause, as specified in said praecipe, except that said praecipe included an order entered March 24, 1917, allowing filing of amended bill of complaint, amended bill of complaint filed March 20, 1917, and order of Court entered April 17, 1917, which were not found to have been [647] filed or entered in my office, and are therefore not included in said transcript on appeal; said record also includes the original citation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States, in and for the Southern District of California, Southern Division, this 8th day of November, in the year of our Lord, one thousand nine hundred and nineteen and of our Independence the one hundred and forty-fourth.

[Seal] CHAS. N. WILLIAMS,
Clerk of the District Court of the United States of
America, in and for the Southern District of
California. [648]

[Endorsed]: No. 3411. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Appellant, vs. Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, General Pipe-Line Company of California, Independent Oil Producers Agency, General Petroleum Corporation, Producers Transportation Company, British-American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey, F. J. Elliott, John Barneson and William Walker, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed November 12, 1919.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

IN THE
United States Circuit Court of Appeals

For the Ninth Circuit

THE UNITED STATES OF AMERICA,
Appellant,
vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANK LINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS' AGENCY, GENERAL PETROLEUM CORPORATION, PRODUCERS' TRANSPORTATION COMPANY, BRITISH-AMERICAN OIL COMPANY, NORTH MIDWAY OIL COMPANY, SUSAN ELLIOTT, A. B. PERKEY, F. J. ELLIOTT, JOHN BARNESON, AND WILLIAM WALKER,
Appellees.

**Appeal from the United States District Court for
the Southern District of California,
Northern Division.**

Brief for Appellant.

HENRY F. MAY,
EUGENE B. LACY,
Special Assistants to the
Attorney General,

CHAS. D. HAMEL,
Special Assistant to the
United States Attorney,
Solicitors for Appellant.



No. 3411

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

THE UNITED STATES OF AMERICA,
Appellant,
vs.
DOMINION OIL COMPANY, GEN-
ERAL PETROLEUM COMPANY,
BANK LINE OIL COMPANY,
STANDARD OIL COMPANY, GEN-
ERAL PIPE-LINE COMPANY OF
CALIFORNIA, INDEPENDENT
OIL PRODUCERS' AGENCY, GEN-
ERAL PETROLEUM CORPORA-
TION, PRODUCERS' TRANSPOR-
TATION COMPANY, BRITISH-
AMERICAN OIL COMPANY,
NORTH MIDWAY OIL COMPANY,
SUSAN ELLIOTT, A. B. PERKEY,
F. J. ELLIOTT, JOHN BARNESON,
AND WILLIAM WALKER,
Appellees.

**Appeal from the United States District Court for
the Southern District of California,
Northern Division.**

Brief for Appellant.

Statement of the Case.

This is a suit in equity brought by the Govern-
ment to restrain continuing waste and depletion
of the oil contents of a tract of the public land
described as the Northwest Quarter (NW $\frac{1}{4}$) of

Section Fifteen (15), Township Thirty-one (31) South, Range Twenty-two (22) East, Mount Diablo Base and Meridian, and for other relief. The legal title to this land is in the United States. It is included within the area described by the Presidential withdrawal order of September 27, 1909. No discovery of oil or gas had been made on this land at the date of said withdrawal order, nor had drilling for oil then been commenced thereon. It had been claimed as an oil placer mining claim by the posting and recording of notices of location in the names of eight persons at one minute past twelve o'clock on the first day of January, 1908.

In December, 1907, one A. H. Butler, who was familiar with the supposed oil lands of that region, told William Z. McDonald and ex-Senator Stephen W. Dorsey that he knew of a lot of lands which had been located, but upon which the prior locators had "fallen down," and which could be re-located at the end of the year; that he had all the necessary information, including surveys, that would make it possible to locate, and proposed that the land be re-located and that he, Butler, be given a twenty per cent. interest in all lands so located in consideration of the information furnished by him. They all apparently had the mistaken idea that locations were good, even though without discovery, until the end of the year, at which time the lands

would be forfeited and could be re-located unless assessment work had been done, as it had not been done in the case of the lands in question. (Printed Record, pp. 424, 425, 455, 508-510.)

McDonald and Dorsey got together a few associates, who agreed to put up all money necessary for the expense of making the locations; they made use of about twenty-one persons, including some of themselves, with surveyors and a man to keep track of expenditures and supplies, and took them in eight automobiles on the night of December 31, 1907, to post location notices upon 207 quarter sections, including the quarter involved in this case (R., 442). The notices of these locations bore date as of one minute after twelve o'clock on the morning of January 1, 1908, and were recorded the next day (R., 221). These locations were all made as a part of one transaction, the names of the twenty-one persons being used indiscriminately, one of these names being used only upon seven of the locations and two of the names being used upon 201 of the locations. (See detailed statement, R., pp. 551-566.)

The evidence shows that all these locations were made in the interest of an association or syndicate consisting of six groups claiming interests as groups, the first group consisting of Butler and his wife and son. This group was to receive benefits in the

proportion of 20 per cent. of all that might come from the scheme. The five other groups were each to get one-fifth of the remaining 80 per cent., or 16 per cent., each, of these benefits. They were known as the Dorsey group, consisting of Senator Dorsey, his wife, and Mr. Haldeman; the Elliott group, consisting of Elliott and Davis; the strong group, consisting of Strong, George W. Dickinson, and L. W. Andrews; the McDonald group, consisting of Dr. W. Z. McDonald and his son; and the Jones group, consisting of ex-Senator Jones and his son (R., 421, 482). The various members of each group expected benefits in the proportion agreed upon among themselves from the shares of their respective groups, and there were some fifteen persons in all interested in the groups. About twenty-five hundred dollars was contributed by certain members of these groups to cover the expense of the proceedings (R., 426 and 495, ffg.). The greater part of the names used in making the locations were those of persons who were not members of any of the groups and who did not claim or expect any interest in or benefit from the locations. They simply allowed their names to be used as an accommodation to friends without knowing, or inquiring, for whose benefit the use of their names was made. (See testimony of witnesses Gebauer, R., 369; Shaw, R., 371-372; Musser, R., 437, and Casey, R., 474.)

Eight out of the fifteen persons who claimed an interest in the various groups participated to some extent in making the locations; the other seven participated in none of them. But those who were in the groups and whose names appeared upon the notices of location testified that they did not claim any interest by reason of the fact that their names appeared upon particular locations. Their names were used to make locations in the interest of the syndicate exactly as the names of those who claimed no interest whatever were used, namely, to obtain and hold the locations for the benefit of the association or syndicate, as above stated; those whose names appeared on none of the locations getting their proportion as well as those members of the groups whose names were actually used (R., 431-432, 453, 454, 460).

The testimony shows that the scheme was somewhat hurriedly gotten up, so that no exact plan had been agreed upon as to how the association should be organized or title held at the time the locations were made (R., 428, 451, 491). After the locations were made they began to talk about the arrangements for vesting and holding them, the talk being at first of organizing a company under the laws of Arizona; whereupon Doctor McDonald suggested that there was a corporation already

organized, but without assets or liabilities, known as the British-American Oil Company, which corporation was lying dormant and could be used, thus saving the expense of organizing a new one. It was thereupon agreed to adopt that suggestion, to have the few outstanding shares of stock in that company assigned to members of the groups to qualify them for directors, and to have the existing directors resign, except McDonald, and members of the groups put in their places (R., 422-423, 427, 451, 465-466).

Pursuant to this plan, corporate meetings of the British-American Oil Company were held on the third day of February, 1908, putting in the new directors and accepting a proposition made by Strong and Elliott, claiming to be trustees, to the British-American Oil Company, that they would transfer the 207 oil claims covered by the location notices above referred to upon the issuance to them of the entire outstanding capital stock of the British-American Oil Company, and upon the agreement by the British-American Oil Company to convey 640 acres each to Strong, McDonald, Dorsey, Jones and Elliott of land to be selected by them, and "from the first proceeds of the sale of any part of the remaining portion of said property" to pay \$2,500 to Strong, Dorsey, and Jones, whose groups had been shown to have subscribed that sum. The

proposition of the trustees was accepted by the directors; and the stockholders, who were then no other than the directors, ratified the proceeding (R., 386-397). The deed was not made, however, by the trustees until a year afterward, on the fourth day of May, 1909 (R., 260), and no stock was issued until March, 1910 (R., 414).

Pursuant to this plan, the twenty-one persons whose names appeared on the locations, by deed dated March 4, 1908, quit-claimed to Frank R. Strong and M. Z. Elliott, trustees, the 207 locations (R., 223), the deed not being recorded until the 27th of May, 1909, at the same time as the deed from the trustees to the British-American Company (R., 259, 296). No declaration of trust is contained in the deed from the locators to the trustees or from the trustees to the British-American Company other than the description of Strong and Elliott as trustees. The various locators testified that no explanation was made to them, or indeed asked by them, as to the nature of the trust; and it is admitted that there was no statement of it and that the trust was not for the benefit of the locators; but the intention was that it should be for the persons composing the various groups in the proportion in which they were to have stock in the British-American Oil Company (R., 493, 502-506).

Up to this time nothing had been done toward development; nor did the association or the British-American Oil Company or the trustees ever drill upon this or any of the 207 locations (R., 507). The corporation records of the British-American Company show that at a meeting on June 12, 1909, the question of maintaining possession of some of the claims was taken up and the president was authorized to use his judgment about taking steps to "maintain possession" of Sections 10 and 15 and "any other lands of the Company where there is adjacent development" (R., 405). At a meeting on September 11, 1909, there was reference to the right of the British-American Company to be reimbursed if it erected derricks or made expenditures in order to "protect" the NW $\frac{1}{4}$ of Section 15 (R., 411). At a meeting held on September 27, 1909, the attorney for the Company was instructed to draw a lease in favor of George W. Dickinson for the NW $\frac{1}{4}$ of Section 15, with an option to purchase, which lease was made and is spoken of by counsel as the beginning of the defendants' chain of title (R., 412). This lease appears at pages 296-300 of the record and calls for the commencement of the drilling of a well on the property within one year from its date, the 27th of September, 1909. That lease was recorded September 12, 1910, and bore upon it an undated assignment of

the lease by George W. Dickinson, the lessee, to the North Midway Oil Company (R., 301). The record shows that the North Midway Oil Company was organized November 8, 1909, by Elliott, McDonald, Jones, Strong, Andrews, Dickinson, and Roy Jones (R., 516). A lease was authorized by that company and made on November 20, 1909, to one McDonald, providing for the drilling of a well upon the quarter-section in question. This lease was recorded April 1, 1911, and bore upon its margin a partial assignment, undated, to T. R. Finley and others. Under this lease the Dominion Oil Company, the defendant which ultimately did the drilling and made the discovery on this land, claims; and on this drilling and discovery all the other claimants to parts of this land base their title (R., 303, 315).

On September 17, 1909, rig lumber—but not sufficient in amount for a rig—was placed upon the land here involved by order of A. H. Butler, Jr., who claimed to have put it there as one of the stockholders of the British-American Oil Company, evidently in order to “maintain possession” or “protect” the property pursuant to the resolutions hereinabove referred to; not for the British-American Company as such, but with the purpose of saving the property for such of the stockholders of the British-American Company as might see fit

to join him in the enterprise (R., 582-587). See also testimony of Roy Jones (R., 525-529), to the effect that there was talk about raising money by these stockholders, but that none was actually raised or subscribed, but that they "got out from under and subleased to Joe McDonnell." Neither Mr. Butler nor his associates did any drilling, but the lumber placed there by his order was afterwards paid for by the Dominion Company, which did the drilling (R., 525-527).

Some time in September, 1909, after the lumber had been placed upon the property, Joseph P. McDonnell and W. O. Maxwell, while looking for oil property, were informed by one Frazier "that Butler was offering a lease on this particular property" (R., 602). Butler was claiming to represent the British-American Oil Company, and a preliminary agreement was entered into between him and McDonnell, the latter thinks a day or two after the lumber had been delivered, under which McDonnell was to pay \$3,000 for the lease. This was followed by the lease afterward made by the North Midway Oil Company, which was not in existence at the time of Butler's negotiations, but was subsequently organized and took by assignment from Dickinson the lease to him authorized and dated on September 27th (R., 590, 602-603).

McDonnell and Maxwell then made arrangements to have drilling equipment set aside for them (R., 591), which, however, they neither obtained nor paid for; but later, at a date which is not quite certain, they sold a 40-acre interest to the defendant, the Dominion Oil Company, upon the agreement on its part to pay for all material furnished or ordered and to drill a well upon the land. On or about December 10, 1909, a well was spudded in and on Christmas eve or Christmas day of 1909 oil was found. Upon this discovery of oil by the Dominion Company rests the entire claim of all the defendants who claim any interest in the quarter-section here in question.

The documentary evidence shows neither lease nor authority for a lease until the 27th day of September, 1909, the day of the withdrawal, when the British-American Oil Company authorized a lease, which was executed under that date to Dickinson, requiring the drilling of a well within one year. There is no evidence that Dickinson ever did anything toward the drilling. But it is claimed that through subsequent assignments to the North Midway Company, subsequently organized, and through the lease made by that Company on November 20th to McDonnell and transferred by him in part to the Dominion Company, the placing of lumber on the property on September 17th was the

beginning of work leading to the discovery of oil on Christmas eve, 1909, by the Dominion Oil Company.

The evidence shows, too, that at about or soon after the time the lumber was placed upon the property certain men were sent there (R., 581) primarily as watchmen, who were doing nothing except to serve as watchmen, meaning, of course, to "maintain possession" of and "protect" the property; although it is claimed that these men were afterward put to work cutting sagebrush and doing "a little pick and shovel work on the roads," getting them ready for hauling. No date is fixed for the commencement of such work, but it was evidently after the withdrawal; certainly it is not shown that it was before it. (See R., 354, 357, 581, 597, 607, 611, 612.)

Upon this testimony the Court found that work leading to the discovery of oil on the land had been commenced and was in progress at the time of the withdrawal and continued to discovery (R., 199-200); that the evidence failed to show that the locations were made on behalf of the British-American Oil Company, but that, on the contrary, the defendants and those under whom they claim were bona fide occupants and claimants at the date of the withdrawal (R., 199). Upon petition for rehearing the Court held that, although the locations were made in behalf of the association or

syndicate of fifteen persons by the use of the names of persons who had no interest and did not know for whom their names were used, that would not invalidate their action; and that the locations were not invalid, even though the parties for whose benefit they were made did not intend to develop the property, but made the locations with the purpose and expectation of selling and disposing of some of them to other parties and profiting thereby (R., 212, 213).

It seemed to the Government that the evidence, instead of showing diligent work of development, plainly showed that the placing of lumber and watchmen upon the property on the 17th of September, 1909, was simply a move in the interest of certain stockholders of the British-American Company to maintain possession of and protect the property as against jumpers, who were shown to be active in that region (R., 354, 586, 597, 612), while these stockholders tried to find someone who would undertake to drill and were "offering a lease" upon the property (R., 602). The Court, however, found that that was the beginning of diligent work which went on and was properly connected with the work of the Dominion Company, which later drilled the well and made the discovery.

Argument.

There are three questions which we wish to present for the consideration of this Court. The assignments of error are numerous, but they are merely different ways of presenting these three questions.

The first is, whether the Court was warranted in holding that the claimants were bona fide claimants or occupants in diligent prosecution of work leading to discovery of oil or gas upon the property at the date of the withdrawal order within the meaning of the Pickett Act.

The second is, whether the Court was warranted in holding that the location was valid, notwithstanding the fact that it was made in behalf of an association or syndicate, acting as a unit, but not then in corporate form, by using the names of persons who had no interest in the location and did not know for whose benefit their names were being used.

The third question is whether the Court was warranted in holding that the locations were not invalid, even though the parties for whose benefit it was claimed they were made did not intend to do anything to develop the property, but made the locations with the purpose and expectation of selling and disposing of some of them to other parties and profiting thereby.

**The Defendants Had No Rights Which Were
Saved by the Proviso of the
Pickett Act.**

The familiar proviso of the Pickett Act is as follows:

Provided, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands and who, at such date, is in the diligent prosecution of work leading to the discovery of oil or gas, shall not be affected or impaired by such order so long as such occupant or claimant shall continue in diligent prosecution of said work. (36 Stat. 847.)

It was admitted that there was neither discovery nor drilling upon the quarter section involved in this suit prior to the withdrawal, and that nothing had been done prior to withdrawal except to place thereon on the 17th of September, 1909, certain lumber, insufficient in amount for a drilling rig, and then, or shortly thereafter (whether before or after the withdrawal is not clear), to place certain men upon the property, at first and primarily as watchmen, and afterward put to work at grubbing sagebrush, digging holes and doing a little road work. It is submitted that the evidence plainly shows that this was done, not as a beginning of the work of drilling, but to maintain possession of and protect the property while offering a lease to any

one who could be found to take it and agree to develop the property. It was not done by or in the interest of the British-American Company, which then claimed the property, but in the interest of certain stockholders, who wished to save it and to that end ordered the lumber and placed the watchmen, and after ordering the lumber, arranged with McDonnell that he take a lease. After that arrangement was made, these stockholders got the British-American Company to make a lease to Dickinson on the very day of the withdrawal, September 27th; and on November 8th, organized a company of their own, the North Midway Oil Company, which took the assignment of the Dickinson lease, and on November 20th, executed a lease to McDonnell. Neither the British-American Company nor its stockholders, nor Dickinson, nor the North Midway Company, nor McDonnell, ever did any drilling upon the property; but McDonnell entered into a further arrangement with the defendant, the Dominion Company, under which it agreed to repay the small expenses already incurred and to develop the property, which it subsequently did.

For these reasons, and in view of the facts set forth in our Statement of Facts, which need not be here repeated, it is submitted that there were no bona fide occupants or claimants at the date of the withdrawal order, and that no one was doing work

diligently or otherwise leading to the discovery of oil or gas upon the property.

Claimants or occupants to be bona fide claimants or occupants must have a bona fide purpose to comply with the law by doing the work required to make valid the paper location under which they claim. The corporate proceedings of the British-American Company as to reimbursement of the early location expense out of sales of property: as to the reimbursement of those who might "maintain possession" of or "protect" the property; the seeking to find some one who would take a lease and the entire lack of any drilling or obligation to drill on the property, by anybody, prior to the withdrawal and until the Dominion Company took hold some time after November 20th, show that the claimants did not intend to develop and were not bona fide claimants or occupants within the meaning of the law at the time of the withdrawal. In other words, they not only did not do or intend to do diligent work leading to discovery themselves, but their purpose was to prevent others who had a lawful right to enter upon and develop it from doing so without first paying tribute to them.

It is submitted that the same facts show that there was no work going on diligently or otherwise, leading to the discovery of oil or gas upon the

property at the time of the withdrawal. The most that can be said is that there was a lumber pile upon the property, with perhaps watchmen to take care of it, while the stockholders of the British-American Company or McDonnell and Maxwell were figuring on material or labor or were in search of capitalists who might be willing to undertake to develop the property.

In the much quoted case of *McLemore v. Express Oil Co.*, 158 Cal. 559, it is said:

What the attempting locator has is the right to continue in possession, undisturbed by any form of hostile or clandestine entry, while he is diligently prosecuting his work to a discovery. This diligent prosecution of the work of discovery does not mean the doing of assessment work. It does not mean the pursuit of capital to prosecute the work. It does not mean any attempted holding by cabin, lumber pile, or unused derrick. It means the diligent, continuous prosecution of the work, with the expenditure of whatever money may be necessary to the end in view.

In *Borgwardt v. McKittrick*, 164 Cal. 650, it was said that the right of the locator was to be "fully protected against all forms of forcible, fraudulent, surreptitious, or clandestine entries and intrusions upon his possession," so long as he "remains in possession, and with due diligence prosecutes his work toward a discovery," and that "figuring with other persons by a locator as to what they will

charge for the doing of such work, or the making of an effort to find some one who will do such work at a price satisfactory to the attempting locator, * * * cannot be held to constitute a diligent prosecution of the work of discovery any more than the pursuit of capital to prosecute such work can be held to constitute such diligent prosecution.”

See also *Miller v. Chrisman*, 140 Cal. 440
 (affirmed in 197 U. S. 313),
Weed v. Snook, 144 Cal. 439,
Whiting v. Straup, 17 Wyo. 1.

Recently, the United States Supreme Court has discussed the question, and, after citing with approval the cases of *Miller v. Chrisman*, *Weed v. Snook*, *Whiting v. Straup*, and *McLemore v. Express Co.*, above cited, said:

Whatever the nature and extent of a possessory right before discovery, all authorities agree that such possession may be maintained only by continued actual occupancy by a qualified locator or his representatives engaged in persistent and diligent prosecution of work looking to the discovery of mineral.

Union Oil Co. v. Smith, 249 U. S. 337, 348.

In the case at bar there was no discovery at the time of the withdrawal and the Government had an absolute right to withdraw the property from entry. The Government had withdrawn it, but by virtue of the Pickett Act the rights of those persons, if

any, who were bona fide occupants or claimants and were doing certain things were saved. It is for the defendants to show that they were such bona fide occupants and claimants and were diligently at work as required; and unless they do show that, no rights are saved to them by the Pickett Act, and their claims are wholly invalid.

Not only did the defendants fail to bring themselves within the proviso of the Act, but the record evidence is absolutely against them; and even if the oral evidence of the interested parties could overcome the showing of the record and sustain the claim that the various leases and assignments made after the withdrawal were all a part of a plan entered into before that date, that does not show that there was work going on leading to discovery or anything more than a plan to protect the property from others who might lawfully enter upon and develop it until someone was found who would develop it. Furthermore, it is manifest that if such a defense can be sustained the door will be opened wide to unlimited frauds upon the Government through general testimony as to alleged agreements among the claimants themselves, which the Government will rarely if ever be in a position to contradict.

**The Location Invalid as Attempting to Obtain
More Acreage than Allowed
by Law.**

As has been shown in the Statement of Facts, the British-American Company was organized and existing prior to the date the locations were made; and, almost immediately after the locations were made, voted to issue its entire capital stock for the entire 207 locations; and, while that transaction was not made public, the locators transferred all their rights to trustees, who testified that they held for the British-American Company. On its face, this, of course, looks exceedingly like a location made by dummies in the interest of a particular corporation, organized a short time before and taking over the properties as soon as conveniently could be afterward. It certainly would not have appeared differently, if such had been the deliberate plan. The Court, however, found from the oral evidence that the plan to make use of the British-American Company was not adopted until after the locations, and that then it was adopted as a matter of economy and convenience; and that, in his opinion, the evidence "wholly fails to show that the locations were made for and on behalf of the corporation, or that its existence was even known to most of the parties interested therein until after the locations had been made." (R., 198, 199.)

There is no doubt but that such is the purport of the oral evidence; and if it were necessary for the Government to prove that the locations were made for the benefit of the British-American Company, to enable that particular company to acquire title to a larger area of mining land than the law permits, the proof might not be sufficient, although the record so appears and the circumstances point very strongly to that conclusion.

The Government, however, is not so limited, either by the language of its complaint or otherwise. The language of the complaint is:

The said location notice was filed and posted by or for the sole benefit of the defendant, British-American Oil Company, or for someone else other than the persons whose names were used in said pretended location notice, and the names of the pretended locators above set out were used to enable the defendant, British-American Oil Company, or some person other than said persons whose names were so used, to acquire more than twenty acres of mineral land in violation of the laws of the United States. The said persons whose names were so used in said location notice were not *bona fide* locators, and each of them was without an interest in said location notice so filed, and their names were not used to enable each of them, or either of them, to secure only twenty acres of said land or patent therefor; but each of said persons was a mere dummy fraudulently and unlawfully used for the purposes alleged, all of which complainant is informed and believes, and so alleges. (R., 11-12.)

Although the proof may not be sufficient to show that these locations were made for the British-American Company, it is clearly sufficient to show that they were made "for someone else other than the persons whose names were used," and that those names were used to enable either the British-American Company "or some person other than said persons whose names were so used to acquire more than twenty acres of mineral land in violation of the laws of the United States"; and that "those persons whose names were so used" were "without an interest" in the notices filed and that their names were not used to enable them to secure the twenty acres to which they might have been entitled, but that each of said persons was a mere dummy fraudulently and unlawfully used for the purposes alleged.

As is set forth in detail in the Statement of Facts, 207 locations were made in one night in the names of 21 persons, the majority of whom admitted that they had no interest whatever in the locations, but were acting at the request of friends for some person or organization they knew not whom or what; while the minority, who were members of the groups forming the so-called association or syndicate, admitted that so far as their names were used in making the locations they did not claim or expect

to get any interest as locators, but that their names were used for the syndicate or association in the same way that the names of those who claimed no interest at all were used. (R., 432, 453, 454, 460.)

It is clear, also, that while the plan was gotten up hurriedly, and there had been no opportunity to arrange the details as to the holding of claims, they were all taken up in the interest of a single association or syndicate, not then put in corporate form, but expected to be as soon as they could get to it.

It is submitted that it is a distinction without a difference to say that, because they did not have the particular corporation in mind at the moment the locations were made, but immediately after adopted it for economy and convenience instead of organizing a new one, they were in a better or different position than they would have been in if they had intended to use the particular corporation from the beginning; in the meantime treating and considering the association as a unit, to be put in corporate form, in whose interest a large number of names were used indiscriminately, not for the purpose of acquiring rights for the individual locators, or even for individuals for whom they might be acting as agents, but doing everything in pursuance of a plan to vest as large an amount of

property as possible in a single organization.

It is well settled that where locations are made by a group of persons in the interest of a corporation, they can vest in that corporation no larger acreage in any one location than a single person could take, and no acreage at all where the purpose is to evade the law. It is going very far to permit an easy evasion of the law if it can be held that it is lawful to do this for an organization acting as a unit, provided the corporate form is not given to it until after the location notices are posted.

We are, of course, aware that there are cases which hold that where locators have taken up claims in good faith themselves, and, merely in order to handle it more conveniently, incorporate and retain through the agency of a corporation the same interest which they acquired under the location, such location or transfer to a corporation does not invalidate the location.

Borgwardt v. McKittrick Oil Co., supra, 164 Cal. 650.

This, however, is not one of those cases; the original locators acquired nothing either for themselves or any individuals for whom they were acting. Even those persons who claim an interest and whose names appear on the locations testify that they did not consider that they were getting any particular

share in those locations by reason of the use of their names. They, and all the others, were acting merely for an unnamed and unincorporated organization, which was to take and hold the locations as a unit and be put in proper form as soon as possible.

The Location Was Merely Speculative and Therefore Void.

Perhaps the best way of developing our position upon this point is to quote first the language of the Court below in denying the plaintiff's motion for a rehearing.

The second ground is that this location and others made for and on behalf of the syndicate, some two hundred in number, were speculations—and by that I understand counsel to mean that it was not the intention of the parties for whose benefit the locations were made to themselves develop the property, but that they made the locations with the purpose and expectation of selling and disposing of some of them to other parties and profiting thereby.

I know of no statutory or other rule that forbids paper locations of this character, and these were but paper locations. They are not such as are recognized by the law of the United States. But the practice seems to have grown up in this country ~~by~~ making such locations and the locator obtaining some rights that were recognized by the community. The courts have recognized their right to sell and dispose

of their interest under such locations, and the fact that they made them for that purpose would not in my judgment invalidate them. (R., 212.)

With this statement of the law we must squarely take issue. The Court does not deny that the locations were speculative in the sense that even those for whose benefit the locations were made did not intend to develop the property, but made them with the purpose and expectation of selling and disposing of some of them to other parties and profiting thereby; but says that the fact that they made them for that purpose would not in his judgment invalidate them.

That, we submit, is in effect a finding that the locations were made without any purpose to develop, but with the purpose of holding and disposing of them for profit. Whether or not it was so intended the rule applied was on that basis and the evidence will warrant no other conclusion. Neither the locators nor the trustees nor the British-American Company, nor any of its stockholders or subordinate companies, ever did any development work upon any of these 207 locations. Three or four of them were disposed of; the rest dropped. That they contemplated only disposing of them is clear from

the provision of the offer by the trustees to the Company, and accepted at its meeting of February 3, 1908, to convey all the locations to the Company in consideration of all its stock, provided certain organizers might each select a section of land for themselves, and provided further: "And for the further consideration of your agreeing that out of the first proceeds received from the sale of the remaining portion of the said property to be conveyed to you, you shall and will pay the above named parties mentioned as follows, to wit: To Frank R. Strong, \$1,000.00; to Stephen W. Dorsey, \$500.00; to John P. Jones, \$999.90" (R., 394). This clearly shows that their purpose was to hold this immense acreage and make sales of it as opportunity might offer.

The corporate records of the British-American Company, which are pretty fully in evidence, show that there was no intent on its part at any time to develop. It appears from those records that in June and September of 1909 it was recognized that money might have been expended toward "maintaining possession" of or "protecting" certain of the tracts, and that a claim of some sort would be made to secure reimbursement for moneys so spent (R., 405, 411); but there was no effort or purpose to develop them in any way. On the contrary, the evidence

plainly shows that certain stockholders of the company, realizing that the company itself intended to do nothing, took it upon themselves to protect the property and to see if they could arrange in any way with any one who would spend the money for its development. "Maintaining possession" and "protecting," of course, meant keeping off others who had a lawful right to enter upon and develop it. There was good warrant, therefore, for the language of the Court below in defining what he understood to be meant by speculative locations. Our complaint is of the rule of law which was applied to locations of that character.

The mere fact that the attempt was made to make 207 separate locations of 160 acres each at one minute after midnight on the first morning of the year 1908 is in itself a striking circumstance of which the Court cannot but take notice. If it merely appeared that one location was taken up at that time, and in that way, it might have less significance; but when 207 locations are taken up, pursuant to a plan such as was adopted here, the speculative purpose becomes clear beyond all question; and no one could contend that such a wholesale plastering of the land and records with location notices and certificates was with the intent to go to work for the development of all, or any particular

tracts among them all, as was required by law to give the locators any right to retain possession.

See *Union Oil Co. v. Smith*, supra, and cases therein cited.

At a hearing before the Committee on Public Lands of the House of Representatives in May, 1910, while the Pickett Act was under consideration, Mr. Thomas A. O'Donnell, who was put forward as a spokesman by the so-called California Delegation, said:

“Whole counties have been located under the so-called rights that the locators would have under the placer mining law. * * * In many instances in the little towns on midnight of January 1 almost all of the saloon men, and the men that spend a great deal of their time in these towns, go out and locate the whole county. Then they come and ask for a bonus from the operator.” (Printed Report, p. 9.)

MR. PICKETT. I should like to ask this question of some one of these gentlemen here who is authorized to speak for the California delegation present: How much or how little (whichever way you want to put it) do you think a man should do upon one of these locations in order to come within the protection of the law?

MR. EWING. Let Mr. O'Donnell answer that. He is the most practical oil man present.

MR. PICKETT. That brings it down to the point in issue.

MR. O'DONNELL. Gentlemen, I do not believe we want to claim anything from the Govern-

ment of the United States out there except on those lands where there is an actual pursuit of discovery. It is hard to determine just where the pursuit of discovery commences; but it has got to be legitimate and continuous. That is the line of all the decisions in all of the cases we have had in California, when a contest has been raised over these lands. The question has been whether a man was continuously working to the end of making a discovery; whether he was building a pipe line to the land, getting his houses ready, providing his material, hauling his machinery on, or whatever it might be—in other words, whether he was legitimately trying to drill a well upon that territory and make his discovery.

I do not believe any of us want to tie up these government lands and hold them for indefinite periods by making some pretense of putting up a derrick or putting up a cabin, or anything of that kind. As a practical man, knowing nothing about law, I should say that if a provision is inserted in this bill following out the line of those decisions and the practice that they have led to, I believe it will protect the interests of those that are expending money in an effort to make these discoveries, and that any pretense to that end will not acquire these lands. (Printed Report, p. 73.)

It is true, as has been said by this and other courts, that Congress has placed no limit upon the number of locations which single locators or groups of locators may take up. (*Consolidated Mutual Oil Co. v. United States*, 245 Fed. 521, 523.) But it is also true that the spirit and purpose of the law is to prevent any such wholesale attempt; and

where the purpose is as plain as it is here, the law is not powerless to prevent it.

The mineral land laws of the United States are extremely liberal in the requirements under which possessory rights may be acquired. The few restrictions imposed are only intended to prevent the primary location and accumulation of large tracts of land by a few persons, and to encourage the exploration of the mineral resources of the public land by actual bona fide locators.

Cook v. Klonos, 164 Fed. 529, 538.

It is contended by plaintiffs that the evidence shows that Hastings was a "professional staker" and that the whole proceeding on the part of Hastings and Stafford with respect to this location was purely speculative. This objection to the location was a question of fact for the jury, which the court properly submitted for its consideration. In *Erhardt v. Boaro*, 113 U. S. 527, 536, 5 Sup. Ct. 560, 565 (28 L. Ed. 1113), the Supreme Court said that:

"It would be difficult to lay down any rules by which to distinguish a speculative location from one made in good faith with a purpose to make excavations and ascertain the character of the lode or vein, so as to determine whether it will justify the expenditures required to extract the metal; but a jury from the vicinity of the claim will seldom err in their conclusions on the subject."

Rooney v. Barnette, 200 Fed. 700, 711.

It is impossible for us to see how locations can be held to be other than speculative, when they were taken up as these were, without any intention

to develop them even on the part of those persons for whose interest they were located, but with the purpose and expectation on their part of selling and disposing of some of them as occasion might offer and of profiting thereby.

HENRY F. MAY,

EUGENE B. LACY,

Special Assistants to the
Attorney General,

CHAS. D. HAMEL,

Special Assistant to the
United States Attorney,

Solicitors for Appellant.



No. 3411

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

THE UNITED STATES OF AMERICA, vs. DOMINION OIL COMPANY et al.,	<i>Appellant,</i> <i>Appellees.</i>
--	--

BRIEF FOR APPELLEES.

ANDREWS, TOLAND & ANDREWS,
J. R. PRINGLE,
A. L. WEIL,
Solicitors for Appellees.

FILED

FEB 24 1920

F. D. MONCKTON,
CLERK

No. 3411

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

THE UNITED STATES OF AMERICA,
Appellant,

VS.

DOMINION OIL COMPANY et al.,
Appellees.

BRIEF FOR APPELLEES.

In this case, the bill of complaint makes two distinct charges against the defendants:

(1) That the diligence required by the Pickett Act was not exercised;

(2) That the location was void because it was made on behalf of the defendant, British American Oil Company.

On petition for rehearing, it was contended for the first time that the locations were speculative, in that "the parties did not intend to do anything to develop the property", and this point is also urged on the appeal.

It is to be regretted that in the so-called statement of facts so many details are stated that it presents a very complicated picture of a very simple matter, and at the same time, so many other details are omitted that the picture is not only very complicated but very badly distorted.

At the inception of work on the quarter section in controversy, the ownership of the location was claimed as it still is by the British American Oil Company. All the operating defendants are lessees or sub-lessees of this corporation. There has never been any controversy over the title, except with the government, and all the work done was admittedly done under and for the use and benefit of the location which is here involved.

The first attempts towards the development of this property, not resting on the recollection of the parties, but based on the records of disinterested tradesmen, show (see page 569) that on September 17, 1909, there was delivered from the McKittrick yards of the King Lumber Company to this property some 367 pieces of rig lumber, varying in size from 16 by 18 to 1 by 12; that on September 21, 1909, there was delivered from the same place and the same company, 120 pieces of similar lumber for that purpose.

According to the bill of Hickox & Hubbard, teamsters and contractors, there were employed in hauling this lumber on September 17th, two four-horse teams and one six-horse team; on September

18th, 2 four-horse teams and one six-horse team; on September 19th, two four-horse teams and on September 21st one six-horse team (see page 579).

For a period ante-dating the delivery of the rig lumber, the exact date of which is not entirely certain, and continuously thenceforward, there were several men on the ground in the occupation of the land in the employ of the defendants. These are variously estimated as being from three to eight or ten. Obviously, until the lumber arrived, they could not be engaged in drilling the well, but, as the witness says, "These men were getting ready to operate, building the roads, sump holes for the derrick, or clearing the brush" (page 581).

On September 20, 1909, a complete outfit was ordered from the California National Supply Company, consisting of rig irons, tools, cordage, boiler, engine and fittings, at a total cost of about seventy-five hundred dollars. While this was being done, others interested were making an effort to get rig builders, who were very scarce and difficult to get in the field. This is shown by the fact that in the building of this rig, one contractor and his gang started the work, quit before it was finished to go to another job, that a second contractor and his gang carried it forward, and quit, and finally the first contractor, through personal friendship, was induced to leave a job he was on, and go back and finish it up. The whole work may be summarized in the statement of the witness Maxwell, who has no interest whatsoever in this land, and who said: "The

only way of fixing the date is that as soon as we entered into this preliminary agreement (for a lease, his best recollection being September 20th) I started to get all lines moving to the best of my ability”.

It must be borne in mind that this well was at the extreme frontier of development. The field was moving towards the north and west toward McKittrick, and at the time of the bringing of this lumber on the field, it was the extreme northwesterly development, and so far from the normal base of supplies in the Midway field that, as will be noted by the bills, the lumber was brought from McKittrick. Rig builders were almost impossible to obtain as the field was seething with activity. The available supply of water was not sufficient to meet the requirements of the close-in development, and the various water companies had long waiting lists. Lumber was scarce, and it was weeks before one of the essential portions of the rig could be obtained. Yet, in spite of all these handicaps, commencing with the delivery of the lumber on September 17, 1909, the rig was erected, housing arranged for the men, boilers set, engines installed, roads fixed, the water was contracted for, and the lines were laid, the well was spudded in and oil struck by the 25th day of December, 1909.

It must not be thought that any of this energy was induced by the so-called withdrawal of September 27, 1909. This withdrawal, as a matter of common knowledge, came without warning, like

a bolt from the sky. Although dated September 27th and usually designated as the withdrawal of September 27th, it did not pass out of the general land office at Washington until October 5th, and was not received in the local land offices until October 11, 1909 (see page 218-219). Even then, it was weeks before anybody really heard of it.

Regardless, therefore, of any complication of statements, it is impossible to confuse or refute this outstanding fact, that on September 17, 1909, when the first lot of lumber was delivered, there was practically nothing on this quarter section, and that by December 25, 1909, the quarter section had been completely equipped and oil struck at a depth of 500 feet. **Res ipsa loquitur.**

In this view, the citation of authorities would seem to be unnecessary. There are many cases where the measure of diligence has been passed on by the various federal courts, and in one case by this court. We venture to say that in not one of them where the possession of the defendant was sustained under the Pickett Act has there been as great diligence as in the case at bar, whether that diligence be measured by the effort put forward by the defendants or whether it be measured by the results obtained by them.

We feel that there is no testimony that throws the slightest question on the correctness of Judge Bean's finding that

“From the time the lumber was delivered on the property in September to the time the

well was spudded in the property was continuously occupied by the employees of the lessees, engaged in such work as was possible preparatory to actual development. In short every reasonable effort seems to have been made to proceed with the drilling and whatever delays occurred were due to the inability to secure material and workmen”.

THE QUESTION OF FRAUD.

The allegations in the bill in charging fraud, were that the locations were made on behalf of the British American Oil Company and the case was tried on that theory. The evidence showed, without controversy, and the court found, that practically none of the locators of this quarter had ever heard of this British American Oil Company for a considerable time after the locations were made. Furthermore (page 22 of appellant's brief), counsel admit that they have failed to make out a case on this point.

They now, for the first time, call attention to another allegation of the bill substantially to the effect that if the location was not made for the benefit of the British American Oil Company it was made

“for some one else other than the persons whose names were used in said pretended location notice, and the names of the pretended locators above set out were used to enable the defendant British American Oil Company or some person other than said persons whose names were so used to acquire more than twenty

acres of land in violation of the laws of the United States”.

The requirements of equity pleading in the matter of charging persons with fraud certainly do not countenance any allegation of so vague a nature as this.

Patton v. Taylor, 7 How. 159;

Voorhees v. Bonestell, 16 Wall. 16;

Bartol v. Walton, 92 Fed. 14.

It is furthermore to be noted that the allegation is fatally defective in that it does not charge that the purpose of this location was to vest more than a twenty-acre interest in one person *in one location*. An individual is not restricted in the number of twenty-acre locations or twenty-acre interests which he may secure, provided only that one person cannot secure more than a twenty-acre interest in a single association claim. Still counsel doubtless intended that the gravamen of the charge to be that the purpose of the location was to secure for some one in excess of an eighth or a twenty-acre interest, in one location.

That the locations were not for the individual benefit of the persons whose names appeared on the locations, is of course immaterial, as one may locate through an agent, provided only that locations through an agent or in other persons names are not used as a mere cover for obtaining a greater interest in the location than the law permits.

Walton v. Wild Goose etc. Co., 123 Fed. 209, 217;

McCulloch v. Murphy, 125 Fed. 147;
 Book v. Justice, 58 Fed. 106;
 Hirbour v. Reeding, 3 Mont. 15;
 Rush v. French, 1 Ariz. 99;
 Moritz v. Lavelle, 77 Cal. 10.

If any legislative authority could add anything to these decisions it may be noted that there are special formalities required by the Act of August 1, 1912, for the execution of powers of attorney to locate mining claims in Alaska without any statutory provision in the law as elsewhere applicable.

But, according to the government's own statement of the facts in this case, and as is distinctly supported by all the evidence, which is not contradicted, no one obtained more than a twenty-acre interest in this location. An association was formed for the purpose of locating this and other claims toward the end of 1907. This association consisted of fifteen persons. Six of the fifteen acting as a sort of unofficial committee ran the affairs of the association, to wit, A. H. Butler, Senator Dorsey, M. Z. Elliott, F. R. Strong, Dr. McDonald and Senator Jones. Each one of these six had associated with him in turn one or more persons whose interests he took care of, who were generally referred to by the witnesses as belonging to the Butler group, or Jones group, etc. Thus, for example the Butler group consisted of

A. H. Butler,
 Mrs. Butler,
 A. H. Butler, Jr.

These persons had together a one-fifth interest in the association. Each of the other groups had one-fifth of what remained, or a $4/25$ interest in the association. The groups were as follows:

Dorsey Group	Senator Dorsey
	Mrs. Dorsey
	George Haldeman
Elliott Group	M. J. Elliott
	D. Davis
Strong Group	F. R. Strong
	Geo. W. Dickenson
	L. W. Andrews
McDonald Group	Dr. McDonald
	J. E. McDonald
Jones Group	Senator Jones
	Roy Jones

The locations were made on behalf of the association by their agents. Some of the locators were members of the association and some were not, but that was merely a matter of detail and convenience. Those locators who were members of the association only had such interest in the lands covered by the location as was reflected by their interest in the association, and regardless of the fact that on the face of the location notice they were entitled to an undivided one-eighth interest.

We, therefore, have the situation of a location by agents for an association of sixteen persons, none of whom had more than an eighth interest in the location. After the location was made, for convenience in handling, the property was conveyed to

Elliott and F. R. Strong as trustees. The only survivor of these group heads, F. R. Strong, who was also a trustee, testified that he and his associates held the title in trust for the members of the association, and in accordance with the interest that had originally been agreed upon. He did not testify that they held the title to this property in trust for the British American Oil Company, as stated in appellant's brief.

At first, there was considerable uncertainty as to how the claims were to be developed and it was only after much consideration that it was, subsequently, thought advisable to incorporate rather than hold the title in trust, and some discussion arose amongst the members of the association as to the advantages of the laws of the different states for the purposes of incorporation.

Dr. McDonald then called attention to the fact that a considerable time before, he and some other people had organized a corporation under the laws of Arizona, known as the British American Oil Company; that the purpose for which this company was organized had been abandoned, and the company now stood intact without assets or liabilities, and could be conveniently used for this purpose. The status of the corporation was first investigated and Dr. McDonald's offer accepted. The property was conveyed by the trustees to the corporation, and the stock of the British American Oil Company was finally issued to the members of the association

in accordance with their interest as agreed on at the time the association was formed.

Learned counsel, in his brief, makes this single point, that there is a distinction without a difference between locating land for the benefit of an association, and locating it for the benefit of the same persons who are members of a corporation. He says

“They (the locators) were acting merely for an unnamed and unincorporated organization which was to take and hold the locations as a unit, and be put into the proper form as soon as possible.”

There are many who agree with learned counsel's views of the law, and think that the use of the word “association” in the placer mining laws would include a corporation, so that an association placer mining claim might be located for a corporation, if there were a sufficient number of persons interested. Unfortunately for counsel's position, and others, the land office has held that a corporation, regardless of the number of its stockholders, can locate only twenty acres, and this view was held by the court in the case of

Gird v. California Oil Co., 60 Fed. 531.

On the other hand, the statute distinctly provides that an association of persons may locate not exceeding 160 acres as an association placer mining claim, and this view, of course, receives unanimous recognition from the courts and the land office.

Section 2330, Rev. Stats.;

Rooney v. Barnette etc., 200 Fed. 700;

Cook v. Klonos, 164 Fed. 529;
 Nome v. Snyder, 187 F. 385;
 Hall v. McKinnon, 193 F. 572.

This effectually disposes of this point in the brief.

Were it necessary to add anything to the finding of the learned trial judge on the bona fides of this location, it might be of interest that the land office has had the same locators before it in two applications for patent, on the southwest quarter and the southeast quarter of the same section and on the same record as in the present case held that the locations were valid.

THE DOCTRINE OF SPECULATIVE ENTRIES.

For the first time, on rehearing, the government urged a point that was not only new to this case, but new to the mining law. It was not set up in the pleadings. No proof was offered to support it at the hearing, and no authority is cited to uphold it in the brief.

The charge that the location was "speculative", is in effect a charge of fraud, if the government's legal proposition can be sustained, and there is not one word in the bill raising an issue on this point.

As has been stated before, it is a well established rule of equity pleading, that no relief will be granted on the ground of fraud unless it be made a distinct

allegation in the bill, so that it may be put in issue by the pleadings.

Patton v. Taylor, 7 How. 159;

Voorhies v. Bonestall, 16 Wall. 16;

In

Bartol v. Walters, 92 Fed. 14,

the court said:

“The bill is founded solely on the charge of fraud, and such a bill must always be specific. It is not enough to charge fraud in general terms. The facts constituting the fraud must be stated.”

In the face of this obvious rule, it is quite certain that a charge of fraud cannot be supported by an allegation of quite a different sort of fraud, as happened in this case.

Not only must the fraud be alleged, but it must be proved and must be proved by clear unequivocal and convincing testimony. See

Webb v. United States, 204 Fed. 78;

United States v. Budd, 144 U. S. 154;

United States v. Barber Lumber Co., 194 Fed. 24;

United States v. Albright, 234 Fed. 202.

There was not one word of testimony offered in the case on this point. Practically every surviving member of the original association was in the courtroom as a witness for either plaintiff or defendants, and not one of them was interrogated as to whether the association intended to do any work or not.

Had the issue been made or even proof offered, defendants could at least have made an effort to throw some light on the situation.

The government, after sedulously avoiding this issue, now seeks to draw the inference that the association did not intend to develop the land, from the single fact that a large number of locations were made at one time. However potent this inference might be as to claims that were not developed, how can this inference be made in regard to a claim on which a well was drilled and discovery actually made? The obvious and unescapable answer to the suggestion that they did not intend to develop is that they did develop, and every one is presumed to intend the natural consequences of his acts.

It is very obvious that the real point of appellant is that the work must be done by the locator himself. Otherwise, we would have a so-called paper location posted January 1, 1908, which appellant contends, and, of course, we concede, of itself was a futile act—that it had no validity whatsoever against the United States. No intent could give it any vitality. The mining law requires diligence, not mental attitude. If a proper intent could add nothing to this futile act, an absence of all intent could do no injury and at this stage of the operation, intent is, therefore, a false quantity.

It is only after the claim is developed and discovery made that the question of intent can possibly have any bearing and then we have the government

in the extraordinary situation of asking the court to infer that the locators did not intend to do that which they have done.

This may be made very clear by assuming that it is a crime to discover oil on the public domain, assume that this association made a location as herein shown, leased the land providing in the lease for development work and reserving a royalty on the product. With what effect could defendants, in a criminal prosecution defend on the ground that they did not intend to produce oil?

Therefore, we repeat that the gist of the argument is that, unless the locator do the work personally or out of his own resources, the location is a purely speculative one. That is, that he cannot perfect his location through a vendee, licensee, lessee or associate who may be otherwise given an interest for advancing money. This result necessarily follows for the reason that if a locator can sell, lease or license after location and before discovery, there can be no objection that he has such an intention in his mind. It surely can never be unlawful to intend to do that which the law permits to be done.

This position against selling or leasing, or intending to do so is, of course, contrary to the statutes and the cases. There has never been any restriction whatsoever on the disposition of mining claims, except in the solitary instance when the land office in the *Yard* case (38 L. D. 59), reversing its practice of many years and the decisions

of the state courts, held that the conveyance of an association claim prior to discovery to a single individual destroyed it as an association claim. Congress almost immediately repudiated this *Yard* decision and restored the law as it had always been theretofore recognized,

“That in no case shall patent be denied to or for any lands heretofore located or claimed under the mining laws of the United States containing petroleum, mineral, oil or gas, solely because of any transfer or assignment thereof, or of any interest or interests therein by the original locator or locators or any of them to any qualified persons or person or corporation, prior to discovery of oil or gas therein, but if such claim is in all other respects valid and regular, patent therefor not exceeding one hundred and sixty acres in any one claim shall issue to the holder or holders thereof as in other cases; provided, however, that such lands were not at the time of inception of development on or under such claim withdrawn from mineral entry.”

36 Stats. at Large, p. 1015.

The statute was applied

In *re Graham*, 40 L. D. 128.

It is furthermore well established by the decisions of this court that all acts of location including discovery may be performed by any agent or employee of the locator or by any person in his behalf and for his benefit.

Walton v. Wild Goose etc. Co., 123 F. 209-217;

McCulloch v. Murphy, 125 F. 147.

There is therefore no legal support for the proposition that a locator cannot perfect his rights by a discovery made by his lessee, and consequently for the proposition that there is any inhibition on an intent so to do.

But this is not all. If a locator cannot locate with the expectation of arranging with others to finance his work, it necessarily follows that to make a valid location of an oil claim, he must have sufficient money to drill on oil well.

Under this theory, the mining laws grant to a man with, say, \$40,000, rights they deny to a man with only \$5000, and by a "speculator" the appellant refers to a citizen who presumes to locate public lands which are really reserved for citizens with money.

That this contention has not been appropriately commented on in any adjudicated cases is due, we believe, to the fact that this is the first time an American counsel, driven by the desperation of his position otherwise, has had—shall we say—the courage to advocate it.

It seems to us that the confusion of thought in reference to speculative entries arises out of the phraseology of the statute involving the timber lands. In that statute, the applicant is required to make a verified statement that "He does not apply to purchase the same on speculation but in good faith to appropriate it to his own exclusive use and benefit, and that he has not directly or

indirectly made any agreement or contract in any way or manner with any person or persons whomsoever by which the title which he might acquire from the government of the United States shall inure in whole or in part to the benefit of any person except himself”.

20 Stat. 89; Amend. 27 Stat. 348.

There is nothing analogous to this in the statutes relating to placer mining claims, and the very fact of its inclusion in the one statute and its exclusion from the other would seem to be conclusive that it is not applicable. In order to vest title to a mineral application, the law requires but three things; (1) citizenship; (2) marking the boundaries; (3) discovery. There is nothing said about intent or purpose. A locator may develop it into a mine and operate it, or he may sell it as a prospect.

In this case, there was the requisite citizenship, and there was the necessary discovery, and thereafter the title vested.

The cases cited by learned counsel for the government in their brief have certainly little bearing on the question. *Cook v. Klonos* and *Rooney v. Barnette*, involve the question of locations made in the name of one set of persons for the benefit of others, and the question simply was whether those others by any scheme thus evolved received more than a twenty-acre interest in any one location. Reading these cases together, the law becomes very clear that if the location is made by the

requisite number of persons, but there is an agreement before the location or perhaps at the very time of the location, whereby more than a twenty-acre interest inures to the benefit of one of the locators or some third person, then the location is void to that extent, whereas, if there is no agreement at the time of the location, or prior thereto that the locators may dispose of the land as they see fit, and it does not affect the validity of the location. It is true the government has sought to prevent the accumulation of large tracts of land by a few persons as was said in *Cook v. Klonos*, but a specific method has been adopted to prevent this. The method in placer mining claims is to deny rights to more than one hundred and sixty acres on a single discovery, and then only if there are at least eight locators, not one of whom has more than an eighth interest in the claim. Thereafter, all that the law requires is the expenditure of one hundred dollars a year, and it does not require even this, except insofar as the claimants may desire to exclude relocations by third parties. In the absence of such relocations or adverse contention by third parties the mere fact of discovery is sufficient, and no work at all need be done upon the land. There is nothing in the law which prevents any one making as many placer mining locations as he likes, and if he makes a discovery on each one, he can hold them all. If he does not make a discovery on some, but does on others, he loses the ones that he fails to work on, but holds the ones that he does work on.

To recognize the novel proposition contended for by the appellant would cloud the title to all mining claims in the west. And more than this, cloud it in a way that could never be finally settled except by a final judgment in each case. For this reason, if for no other, the law should be left as it is.

In conclusion, therefore, it is urged: That the learned judge of the district court was correct in finding from the testimony introduced that there was due diligence at the time of the withdrawal; that he was correct in his findings that the charge of fraud set out in the bill of complaint was not sustained, and this the counsel for appellant admits; and finally that the novel doctrine of speculative entry is not within the pleadings, is not supported by any evidence, and is not the law of the land.

Dated, San Francisco,

February 21, 1920.

Respectfully submitted,

ANDREWS, TOLAND & ANDREWS,

J. R. PRINGLE,

A. L. WEIL,

Solicitors for Appellees.

50.



